

The **NORTH CAROLINA REGISTER**

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NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues. Individual issues may be purchased for eight dollars (\$8.00).

Requests for subscription to the North Carolina Register should be directed to the Office of Administrative Hearings, P. O. Drawer 27447, Raleigh, N. C. 27611-7447.

ADOPTION AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, Codifier of Rules must review the agency's written statement of need for the temporary rule pursuant to the provision G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review. The agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into NCAC. A temporary rule becomes effective either when Codifier of Rules enters the rule in the Code or on the second business day after the agency resubmits the rule without changes. The temporary rule is in effect for the period specified in the rule, up to 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% of is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down into chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 53 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscription and supplements to the initial publication are available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 1:1 NCR 101-201, April 1, 1986 refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

FOR INFORMATION CONTACT: Office of Administrative Hearings, ATTN: Rules Division, P. O. Drawer 27447, Raleigh, North Carolina 27611-7447, (919) 733-2678.

NORTH CAROLINA REGISTER



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Publication Schedule
(May 1992 - December 1993)

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing	Earliest Date for Adoption by Agency	Last Day to Submit to RRC	* Earliest Effective Date

05/01/92	04/10/92	04/17/92	05/16/92	05/31/92	06/20/92	08/03/92
05/15/92	04/24/92	05/01/92	05/30/92	06/14/92	06/20/92	08/03/92
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11/01/93	10/11/93	10/18/93	11/16/93	12/01/93	12/20/93	02/01/94
11/15/93	10/22/93	10/29/93	11/30/93	12/15/93	12/20/93	02/01/94
12/01/93	11/05/93	11/15/93	12/16/93	12/31/93	01/20/94	03/01/94
12/15/93	11/24/93	12/01/93	12/30/93	01/14/94	01/20/94	03/01/94

* The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule above, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st business day of the next calendar month.

**TITLE 2 - DEPARTMENT OF
AGRICULTURE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Structural Pest Control Committee intends to amend rule(s) cited as 2 NCAC 34 .0313, .0318, .0602, .0604, .0902, .1001; and adopt rule(s) cited as 2 NCAC 34 .0406 with changes from the proposed text noticed in the Register, Volume 6, Issue 21, pages 1574-1579.

The proposed effective date of this action is August 3, 1992.

Comment Procedures: Interested persons may present their views in writing from June 15, 1992 to July 15, 1992. Such written comments must be mailed to the Chairman of the North Carolina Structural Pest Control Committee, P.O. Box 27647, Raleigh, NC 27611.

**CHAPTER 34 - STRUCTURAL PEST CONTROL
DIVISION**

**SECTION .0300 - LICENSING AND
CERTIFICATION**

**.0313 INFORMATION ON REGISTERED
TECHNICIAN'S IDENTIFICATION
CARDS**

(a) A registered technician's identification card shall contain, but not be limited to, the following information:

- (1) name of registrant;
- (2) name of licensee or employer;
- (3) name of licensee's company;
- (4) address of licensee's company;
- (5) license number and phase(s) of licensee;
- (6) age, weight, height, color of hair and eyes of registrant;
- (7) job classification of card holder;
- (8) issuance date, expiration date and license year covered by card.

(b) The registered technician's identification card and the license of the employer of the card holder shall bear the same license number and license phase(s). Each registered technician's identification card shall bear only one license number, one company name, and not more than three license phases.

(c) A licensee or non-commercial certified applicator applying for the issuance or renewal of a registered technician's identification card for his employee shall certify to the Division that the employee has completed employee training approved by the ~~committee~~ Committee in structural pest control work.

(d) In the event the ~~committee~~ Committee approves employee training materials produced by the Division, such materials shall be purchased for each home office and by at least one non-commercial certified applicator at each business location at a cost determined by the ~~committee~~ Committee; provided, however, a licensee who is licensees performing work under the structural pest control license of another and non-commercial certified applicators who are not currently engaged in structural pest control shall not be required to purchase the training materials.

(e) Training materials shall be made available for inspection during regular business hours upon request by the Division.

Statutory Authority G.S. 106-65.29.

**.0318 CHANGE IN STATUS OF LICENSEE
AND/OR CERTIFIED APPLICATOR**

(a) When there is a change in the status of a licensee in relation to the company or branch office, the license number given to the original licensee of a company may be retained by that company or branch office, at the discretion of the ~~committee~~, Committee, and upon written request within 10 days of such change.

(b) It shall be the responsibility of each licensee and certified applicator to inform the ~~committee~~ Committee secretary, in writing, on a form prescribed by the Division, and within 10 days, of any change in employment status, including but not limited to:

- (1) change from one employer to another;
- (2) change of business address;
- (3) change of company name;
- (4) change of telephone number;
- (5) sale of business;
- (6) discontinuance of business;
- (7) change of business location;
- (8) change of resident agent.

Statutory Authority G.S. 106-65.29.

SECTION .0400 - PUBLIC SAFETY

.0406 SPILL CONTROL

Licensees and certified applicators shall maintain adequate spill control materials and/or equipment at all locations used to store pesticides and on all service vehicles used to transport pesticides.

Statutory Authority G.S. 106-65.29.

**SECTION .0600 - WOOD-DESTROYING
ORGANISMS AGREEMENTS**

PROPOSED RULES

.0602 WOOD-DESTROYING INSECT AND OTHER ORGANISM REPORTS

(a) Between September 1, 1987 and January 31, 1988, any Any written statement as to the presence or absence of wood-destroying insects or their damage in buildings or structures for sale shall be on either HUD Form No. 92053 or the WDIR 100. As of February 1, 1988, only WDIR 100 shall be accepted for use by the Committee. Incomplete An incomplete or inaccurate Wood-Destroying Insect Reports Information Report shall not be acceptable and the issuance of such reports a report is grounds for disciplinary action by the Committee. No Wood-Destroying Insect Reports Information Report or Wood-Destroying Organism Reports Report shall be issued before an inspection of the building or structure is made. Each Wood-Destroying Insect Information Report issued by a licensee shall be kept in the files of said licensee and made available at the for inspection upon request of the enforcement agency, for inspection. Division.

(b) If during the inspection of a structure, a licensee or his authorized agent finds live subterranean termites or visible evidence of past or present infestation of subterranean termites (such as tubes, damage, cast wings, infested wood scraps or other cellulose materials, etc.) in the structure and there is no visible evidence that said structure has been treated for subterranean termites, the licensee shall treat said structure for subterranean termites prior to the issuance of a Wood-Destroying Insect Report on the structure which states that the structure is free from subterranean termites.

(c) A licensee, certified applicator or registered technician shall not remove or destroy, or cause the removal or destruction of, any wood-

destroying organism evidence discovered in, on, under or in or on debris under a structure inspected pursuant to this Rule except as required by Paragraph (b) of this Rule.

Statutory Authority G.S. 106-65.29.

.0604 WOOD-DESTROYING ORGANISMS RECORDS

(a) A duplicate of each written agreement and waiver (if applicable), including wood destroying insect reports or wood destroying organism reports, for the control and/or prevention of any wood-destroying organism shall be kept by the licensee for a minimum of two years beyond the expiration date of the written agreement. The duplicate of each written agreement shall contain, in addition to the information specified under Rule .0605(a) or Rule .0605(d) of this Section, the following:

- (1) EPA approved brand name of pesticide used; and
- (2) Information required by EPA.
- (b) A duplicate of each wood-destroying insect or wood-destroying organism report shall be kept by the licensee for a minimum of two years beyond the date of issuance.
- (c) (b) Non-commercial certified applicators shall maintain the following records for two years beyond the last date of treatment:
 - (1) EPA approved brand name of all pesticides used;
 - (2) Target pest;
 - (3) Site of application;
 - (4) Date of application; and
 - (5) Information required by EPA.

Statutory Authority G.S. 106-65.29.

SECTION .0900 - DUTIES AND RESPONSIBILITIES OF LICENSEE

.0902 FINANCIAL RESPONSIBILITY

(a) Structural pest control licensees A licensee shall obtain and maintain financial responsibility by in the form of a general liability insurance with policy which covers operations in progress and completed operations. included and minimum limits equal to or greater than the minimum limits outlined in Rule .0902(b) of this Section. Any licensee subcontracting work shall also obtain owner's and contractor's protective insurance. The insurance policy must provide coverage for all employees that work for the licensee. If an insurance policy is issued to a structural pest control company that employs more than one licensee and the policy otherwise meets the standard set forth in this Rule, all licensees employed by the structural pest control company will be deemed to have insurance.

(b) Minimum limits. The insurance policy required in Paragraph (a) of this Rule must provide the following minimum coverage:

(1) <u>Single limit:</u>	
Property Damage	\$100,000 Each Occurrence
Bodily Injury	\$300,000 Each Occurrence
(2) <u>Combined single limit</u>	\$300,000 Each Occurrence

(c) Each applicant for a license in any phase of structural pest control shall show evidence of his financial ability to properly indemnify persons suffering from the use or application of pesticides in the

PROPOSED RULES

form of a Certificate of Insurance completed by the insurance company with the Division named as a certificate holder.

(d) The Certificate of Insurance shall clearly set forth the type of coverage, limits of liability, and any exclusions of the policy and shall have attached a copy of either endorsement GL 04 17 or CG 04 57 or other subsequent "Pesticide or Herbicide Applicator Coverage" endorsement approved by the North Carolina Department of Insurance which provides for pollution and contamination coverage. an endorsement which indicates that the policy provides coverage for any pollution and/or contamination occurring as a result of the use or application of any pesticide.

(e) The license applicant shall be responsible for the submission of the Certificate of Insurance to the Division as specified in Rule .0902 Paragraphs (c) and (d) of this Section. Rule. No license shall be issued, re-issued, or renewed unless or until said Certificate of Insurance is received by the Division.

(f) The insurance policy(s) shall be with companies licensed, or otherwise approved to do business in North Carolina, by the NC Department of Insurance. The insurance policy shall be in full force and effect during the entire period covered by the license certificate. The license shall expire at expiration or upon: reduction of the policies below minimum requirements or cancellation thereof.

- (1) reduction of the available coverage under the policy below the minimum limits set forth in Paragraph (b) of this Rule;
- (2) cancellation of the policy; or
- (3) expiration of the policy.

Such expired license shall only be reinstated upon satisfactory proof from the licensee that he has obtained the required financial responsibility coverage.

(g) The licensee shall give at least 10 days notice by registered mail, to the Division as a condition precedent to the cancellation by the insurer, material change or cancellation by the insured; and, if such condition is not satisfied, any cancellation or attempted cancellation shall be null, void, and of no effect. In addition, the licensee shall give notice to the Division of any reduction in property damage or bodily injury coverage below the minimum limits, when any of the following occur:

- (1) cancellation of the policy;
- (2) material change in the policy; or
- (3) reduction of the available coverage under the policy below the minimum limits set forth in Paragraph (b) of this Rule.

(h) No structural pest control license shall be issued to any person where there exists an outstanding and unpaid final judgement against said person resulting from any civil suit arising out of damages suffered by a plaintiff as the result of a misuse of a pesticide by said person. Any current and valid structural pest control license shall become null and void 180 days following the imposition of a final judgment awarding damages to any plaintiff resulting from a civil suit arising out of losses suffered as the result of a pesticide misuse by the holder of said license unless the final judgment is settled in full within said 180 days.

(i) The committee Committee may accept other evidence of financial responsibility.

(j) Rule .0902 Paragraphs (a) through (i) of this Rule shall not apply to any individual holding an inactive license as defined by Rule .0102(29) Rule .0102(30) of this Chapter.

Statutory Authority G.S. 106-65.37.

SECTION .1000 - TIME FOR FILING COMPLAINTS

.1001 TIME FOR FILING COMPLAINTS

(a) No disciplinary action against a licensee, employee of a licensee or certified applicator shall be commenced against a licensee, employee of a licensee or certified applicator for any violation of these Rules, except those violations specified in Paragraph (b) of this Rule, after two years from the act or omission, that occurred during the treatment or after the expiration of the structural pest control contract, whichever is the later, except that with respect to disciplinary action alleging a violation of G.S. 106-65.28(a)(1), the

action shall be commenced within two years from the discovery by the Committee of the alleged facts constituting the fraud or misrepresentation.

(b) With respect to disciplinary action alleging a violation of G.S. 106-65.28(a)(1), (2), (4), (7), (8) or (11), no disciplinary action shall be commenced against a licensee, employee of a licensee or certified applicator after two years from the date of discovery by the Division of the alleged violation.

Statutory Authority G.S. 106-65.29.

* * * * *

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Structural Pest Control Committee intends to adopt rule(s) cited as 2 NCAC 34 .0407 - .0408.

The proposed effective date of this action is August 3, 1992.

The public hearing will be conducted at 10:00 a.m. on June 16, 1992 at the Board Room, Agriculture Bldg., 2 W. Edenton St., Raleigh, NC 27601.

Reason for Proposed Actions: To establish standards for the storage of pesticides to prevent leakage and spills.

Comment Procedures: Interested persons may present their views either orally or in writing at the hearing or prior to the hearing by mail, addressed to the Chairman of the North Carolina Structural Pest Control Committee, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 34 - STRUCTURAL PEST CONTROL DIVISION

SECTION .0400 - PUBLIC SAFETY

.0407 STORAGE REQUIREMENTS FOR PESTICIDES

- (a) Pesticides shall be stored to prevent leaking.
- (b) Pesticides shall be stored to facilitate inspections by the Division.
- (c) Pesticides shall be stored in labeled containers. The following information shall be clearly and prominently stated on each pesticide container:
 - (1) manufacturer's complete brand name of product;
 - (2) percentage of each active ingredient;
 - (3) EPA registration number;
 - (4) signal word;
 - (5) use classification (general use or restricted use).

Pesticides which are labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the North Carolina Pesticide Law of 1971 and rules promulgated thereunder shall be deemed to have met the requirements of this Paragraph.

(d) Pesticides (formulated products or dilutions) shall not be stored in any container that is specifically designed to contain either beverage,

feed, food or medicine or any container which has previously been used for a beverage, feed, food or medicine.

(e) Pesticides shall not be stored in a manner that could cause the contamination of beverages, eating utensils, feed, fertilizer, food, medicine, other pesticides, seed, tobacco, tobacco products or in a manner otherwise likely to result in accidental ingestion by humans or domestic animals.

(f) Pesticides shall be stored in accordance with label recommendations and requirements.

(g) Pesticides shall be stored in accordance with the label requirements of non-pesticide products which are stored in the same storage area as the pesticides.

(h) When unattended, pesticides shall be stored to prevent unauthorized access.

(i) Pesticides shall be stored in an area that does not accumulate water and that is dry and ventilated.

(j) Pesticide storage areas shall be free of combustible materials such as gasoline, kerosene, or petroleum solvents other than those associated with pesticide application and debris such as waste paper, rags, or used cardboard boxes. Pesticide storage areas shall be separated from operations which present a fire hazard such as welding or burning. Appropriate care shall be taken to minimize fire hazard potential when providing supplemental heating to the storage area.

Statutory Authority G.S. 106-65.29.

.0408 STORAGE REQUIREMENTS FOR RESTRICTED USE PESTICIDES

- (a) In addition to the storage requirements set forth in Rule .0407 of this Section, restricted use pesticides shall be stored in accordance with the requirements set forth in this Rule.
- (b) Restricted use pesticides shall be stored so as to prevent unauthorized access to the pesticides. When unattended, the storage area shall be locked. A warning sign shall be posted beside all entrances to the storage area which states: "PESTICIDE STORAGE," "AUTHORIZED PERSONNEL ONLY," "IN CASE OF EMERGENCY, CALL . . .".
- (c) Restricted use pesticides shall be stored to prevent contact with water resulting from cleanup, the intrusion of storm waters, leaks, impounded or flowing waters, or any other water source which represents a likely potential for flooding.
- (d) Restricted use pesticides shall not be stored within 50 feet horizontally of any private water supply.

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(e) Restricted use pesticides shall not be stored within 100 feet horizontally of any public water supply.

(f) A prefire plan shall be developed for each storage area. The plan shall be a description of the plans and procedures for management of fires involving pesticides. A suggested prefire plan format is the publication, "Pre-Planning and Guidelines for Handling Agricultural Fires," reprinted by the National Agricultural Chemicals Association:

- (1) one copy of the plan approved by the fire department and/or emergency services office having jurisdiction shall be maintained in the office of the licensee or certified applicator for inspection by the Division;
- (2) one copy of the plan shall be filed with the fire department and/or emergency services office having jurisdiction;
- (3) a request shall be made in writing to the local fire department and/or emergency services office having jurisdiction for no less than an annual inspection of the storage area.

(g) The licensee or certified applicator responsible for the storage area shall maintain a current inventory list by brand name and formulation of all pesticides, both general use and restricted use, stored in the storage area. An inventory list shall be considered current if it is updated every 30 days. A copy of the inventory list shall be maintained at a separate location from the storage area. The inventory list shall be made available to the Division upon request.

(h) The licensee or certified applicator responsible for the storage area shall notify the Division immediately of any emergency such as a fire, spill, or unintended release of restricted use pesticides into the environment from the storage area, if the emergency poses a hazard or imminent danger to man, animals, aquatic life, or threat of substantial damage to property. Such notification of the Division does not preclude notification being given to the appropriate local fire department, emergency services office, or other state or federal agencies requiring such notification.

Statutory Authority G.S. 106-65.29.

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Gasoline and Oil Inspection Board intends to amend rule(s) cited as

2 NCAC 42 .0102, .0201, .0401 and adopt rule(s) cited as 2 NCAC 42 .0801 - .0806.

*T*he proposed effective date of this action is September 1, 1992.

*T*he public hearing will be conducted at 9:30 a.m. on June 26, 1992 at the Jim Graham Meeting Room, Jim Graham Building, N.C. State Fairgrounds, 1025 Blue Ridge Blvd., Raleigh, NC 27607.

*R*eason for Proposed Actions: To establish oxygen content standards for gasoline.

*C*omment Procedures: Interested persons may present statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to N. David Smith, Secretary of the North Carolina Gasoline and Oil Inspection Board, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 42 - GASOLINE AND OIL INSPECTION BOARD

SECTION .0100 - PURPOSE AND DEFINITIONS

.0102 DEFINITIONS

Except as otherwise defined in Chapter 119, North Carolina General Statutes, the definitions applicable in this Chapter are as follows:

- (1) "ASTM" means the American Society for Testing and Materials.
- (2) "Approved denaturant(s)" means materials used for denaturing ethyl alcohol for use as a motor fuel which have been approved by the U.S. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms and the director.
- (3) "Approved lead substitute" means an EPA registered gasoline additive formulated to reduce valve seat recession in engines designed to operate on leaded gasoline and which has been approved by the director. Such approval shall be based upon the submission of scientific documentation acceptable to the director.
- (4) "Board" means the Gasoline and Oil Inspection Board.
- (5) "Cetane number" means the relative ignition quality of diesel fuels by the ASTM Cetane Method D-613.
- (6) "Control area" means an area of the state designated by the Environmental Management Commission pursuant to Title 2 of the Clean Air Act Amendments of 1990 in which the oxygen content of gasoline is reg-

ulated for the purpose of reducing carbon monoxide levels.

(6) "Control area oxygenate blending facility" means any facility at which the oxygen content of gasoline is altered, excluding retail outlets and wholesale purchaser-consumer facilities.

(7) "Control area terminal" means a terminal which is capable of receiving gasoline in bulk, e.g., by pipeline, marine vessel, tank truck, or barge, or at which gasoline is altered either in quantity or quality, excluding the addition of deposit control additives.

(8) "Control period" means the period during which the oxygen content of gasoline is regulated in any control area.

(9) (6) "Denatured fuel ethanol" means ethanol meeting the provisions of ASTM D-4806, "Standard Specification for Denatured Fuel Ethanol to be Blended with Gasolines for Use as an Automotive Spark-Ignition Engine Fuel."

(10) (7) "Director" means the director of the Standards Division of the North Carolina Department of Agriculture.

(11) "Distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(12) (8) "EPA" means the United States Environmental Protection Agency.

(9) "Gasoline oxygenate blend" means a blend consisting primarily of gasoline and a substantial amount of one or more oxygenates. This definition includes, but is not limited to the following designations:

(a) Gasohol meaning any motor fuel containing a nominal ten volume percent anhydrous denatured ethanol and 90 volume percent unleaded gasoline, regardless of other name, label, or designation.

(b) Leaded gasohol meaning any motor fuel containing a nominal ten volume percent anhydrous denatured ethanol and 90 volume percent leaded gasoline, regardless of other name, label, or designation.

(c) Any gasoline oxygenate blend which meets the EPA's "Substantially Similar" rule.

(d) Any gasoline oxygenate blend for which there is an existing Clean Air Act waiver issued by EPA.

(e) Any gasoline oxygenate blend which is not subject to EPA fuel requirements, but for which approval has been granted by the board for sale in North Carolina.

(13) (10) "Leaded" means any gasoline or gasoline-oxygenate blend which contains not less than 0.05 gram lead per U.S. gallon (0.013 gram lead per liter) or contains an approved lead substitute which provides a lead equivalency of at least 0.10 gram lead per U.S. gallon (0.026 gram per liter).

(14) (11) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons or mixtures of same: propane, propylene, butanes (normal or iso-butane), and butylenes.

(15) (12) "Motor Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Motor Method (D-2700).

(16) "Non-oxygenated gasoline" means any gasoline which does not meet the definition of oxygenated gasoline.

(17) (13) "Octane Index" means the number obtained by adding the research octane number and the motor octane number and dividing the sum by two.

(18) "Oxygen content of gasoline" means the percentage of oxygen by weight contained in a gasoline, based upon its percentage oxygenate by volume, excluding denaturants and other non-oxygen-containing components with all measurements adjusted to 60 degrees Fahrenheit.

(19) "Oxygenate" means an oxygen containing, ashless organic compound, such as an alcohol or an ether, which may be used as a fuel or a fuel supplement.

(20) "Oxygenated fuel" means a liquid fuel which is a homogeneous blend of hydrocarbons and oxygenates.

(21) "Oxygenate" means any substance which, when added to gasoline, increases the amount of oxygen in that gasoline, and which either complies with the "Substantially Similar" rule under Section 211(f)(1) of the Clean Air Act, or is permitted under a waiver granted by EPA.

(20) "Oxygenated gasoline" means any gasoline containing a substance which adds oxygen to that gasoline.

(21) (16) "Qualitative word or term" means any word or term used in a brand name which by definition or customary usage indicates a level of quality, classification, grade, or designation.

(22) (17) "Regular" when used as part of a brand name and/or as a grade designation for gasoline or gasoline-oxygenate blend shall be construed to mean a leaded regular grade commercial automotive gasoline or

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gasoline-oxygenate blend unless the brand name and/or grade designation also contains the word "Unleaded" or a word or term of equivalent meaning.

(23) (18) "Research Octane Number" means the number describing the relative anti-knock characteristic of a motor fuel determined by ASTM Research Method (D-2699).

(24) "Reseller" means any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

(25) "Retail outlet" means any establishment at which gasoline is sold or offered for sale to the ultimate consumer for use in a motor vehicle.

(26) "Retailer" means any person who owns, leases, operates, controls or supervises a retail outlet.

(27) (19) "Substantially Similar" rule means the U.S. Environmental Protection Agency's "Substantially Similar" rule, Section 211 (f) (1) of the Clean Air Act [42 U.S.C. 7545 (f) (1)].

(28) "Terminal" means a facility at which gasoline is sold, or dispensed into trucks for transportation to retail outlets or wholesale purchaser-consumer facilities.

(29) (20) "Total alcohol" means the aggregate total in volume percent of all alcohol contained in any fuel defined in this Chapter.

(30) (21) "Total oxygenate" means the aggregate total in volume percent of all oxygenates contained in any fuel defined in this Chapter.

(31) (22) "Unleaded" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.05 gram lead per U.S. gallon (0.013 gram lead per liter) and not more than 0.005 gram phosphorus per U.S. gallon (0.0013 gram phosphorus per liter).

(32) "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that organization.

ASTM documents referred to in this Rule are hereby adopted by reference, in accordance with G.S. 150B 14(e) including subsequent amendments and editions, and are available for inspection in the Office of the Director of the

Standards Division. Copies of these documents may be obtained from the ASTM, 1916 Race Street, Philadelphia, PA 19103, at a cost determined by ASTM.

Statutory Authority G.S. 119-26.

SECTION .0200 - QUALITY OF LIQUID FUEL PRODUCTS

.0201 STANDARD SPECIFICATIONS

(a) The Board hereby adopts by reference, in accordance with G.S. 150B 14(e), including subsequent amendments and editions, ASTM D-4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline with the following modifications:

- (1) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;
- (2) The minimum lead content for gasoline registered and/or labeled as "leaded" or "regular" shall be as defined in Rule .0102(10) of this Chapter;

(3) ~~Reid vapor~~ Vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification.

(b) The Board hereby adopts by reference, in accordance with G.S. 150B 14(e), including subsequent amendments and editions, ASTM D-4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" as standard specification for gasoline/oxygenate/alcohol blends with the following modifications:

- (1) A vapor pressure tolerance not exceeding one pound per square inch; ~~may be at~~

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lowed for gasohol, leaded gasohol, and gasoline oxygenate blends;

(2) Reid vapor Vapor pressure and vapor/liquid ratio seasonal specifications as listed in this Subparagraph may be extended for a maximum period of 15 days to allow for the disbursement of old stocks. However, new stocks of a higher volatility classification shall not be offered for retail sale prior to the effective date of the higher volatility classification;

(3) Applications for temporary exceptions to vapor pressure and vapor/liquid ratio specifications as provided in this Subparagraph may be made to the director. Said applications shall contain evidence satisfactory to the director that outlets marketing gasoline in North Carolina cannot feasibly be supplied from bulk terminals furnishing specified volatility level gasoline or that customary sources of supply have been temporarily interrupted by product shortage and alternate sources furnishing specified volatility level gasoline are not available. Such temporary exceptions granted shall apply only until the next meeting of the board at which time the board shall establish the duration of the exception;

(4) The minimum temperature at 50 percent evaporated shall be 158 degrees F. (70 degrees C.) as determined by ASTM Test Method D-86;

(5) The minimum lead content for gasoline/oxygenate blends registered and/or labeled as "leaded" or "regular" shall be as defined in Rule .0102(10) Rule .0102 of this Chapter;

(6) Octane rating shall not be less than the octane index certified on the brand name registration as required by 2 NCAC 42 .0500;

(7) Oxygenate Content:

(A) Gasohol and leaded gasohol shall contain 10 plus/minus 0.5 volume percent denatured fuel ethanol.

(B) Gasoline oxygenate blends not otherwise defined in this Chapter, may contain, maximum or minimum as appropriate, the percentage and type of oxygenates as certified on the brand name registration as required by 2 NCAC 42 .0500, subject to compliance with other specifications as provided in this Subparagraph;

(7) All blends, both leaded and unleaded, shall be blended according to the EPA "Substantially Similar" rule or an EPA waiver for unleaded fuel;

(8) Water tolerance shall be such that no phase separation occurs when subjected to a temperature equal to the temperatures specified in Table 4, ASTM D-4814.

(c) The Board hereby adopts by reference, in accordance with G.S. 150B-14(e), including subsequent amendments and editions, ASTM D-975, "Standard Specification for Diesel Fuel Oils" as standard specification for diesel motor fuels with the following modification: For diesel motor fuel grade 2-D, the minimum flash point as determined by ASTM Test Method D-56 shall be 115 degrees F. (46 degrees C.).

(d) The Board hereby adopts by reference, in accordance with G.S. 150B-14(e), including subsequent amendments and editions, ASTM D-396, "Standard Specification for Fuel Oils" as standard specification for fuel oils.

(e) The Board hereby adopts by reference, in accordance with G.S. 150B-14(e), including subsequent amendments and editions, ASTM D-3699, "Standard Specification for Kerosene" as standard specification for kerosenes with the following modification: For grade 2-K, the presence or absence of coloring matter shall in no way be determinative of whether a substance meets the requirements of this grade of kerosene.

(f) In addition to meeting all specification requirements as set forth in this Rule, each fuel must be suitable for the intended use.

(g) ASTM documents adopted by reference herein are available for inspection in the Office of the Director of the Standards Division and may be obtained at a cost as determined by the publisher by contacting from ASTM, 1916 Race Street, Philadelphia, PA 19103, at a cost determined by ASTM.

Statutory Authority G.S. 119-26; 150B-14.

SECTION .0400 - DISPENSING DEVICES AND PUMPS

.0401 LABELING OF DISPENSING DEVICES

(a) For the purpose of product identity, each dispensing device used in the retailing of any motor fuel shall be plainly and conspicuously labeled with the following:

- (1) for gasoline, the registered brand name;
- (2) for diesel fuel, the registered brand name plus a descriptive or generic label if the registered brand name does not adequately identify the type and or grade of product.
- (3) for gasoline oxygenate blends containing at least one percent by volume of ethanol, methanol, or combination, the registered

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brand name plus an additional label which states that the blend "contains alcohol," "contains ethanol," "contains methanol," or "contains ethanol/methanol." The label shall be composed of letters at least one inch in height, minimum one-eighth inch stroke, which contrast distinctly with the label background and shall be affixed to the dispenser front panel in a position clear and conspicuous from the driver's position. Exceptions to this Rule are:

- (A) for fuels not covered by an EPA waiver, the additional label shall identify the percent by volume of ethanol and/or methanol in the blend.
- (B) for fuels meeting the EPA's "Substantially Similar" rule and which do not contain ethanol or methanol, no additional label is required.

(b) Each dispensing device used in the retailing of products other than motor fuel shall be plainly and conspicuously labeled as follows:

- (1) Kerosene shall be labeled as either 1-K Kerosene or 2-K Kerosene. In addition, each dispenser shall contain one of the following legends as appropriate:
 - (A) On 1-K kerosene dispensers, the legend "Suitable For Use In Unvented Heaters".
 - (B) On 2-K kerosene dispensers, the legend "May Not Be Suitable For Use In Unvented Heaters".
- (2) Other products shall be labeled with either the applicable generic name or a brand name which identifies the type of product.
- (c) Whenever a motor fuel or other product provided for in this Section is offered for sale, sold, or delivered at retail in barrels, casks, cans, or other containers, each container shall be labeled in accordance with this Section and in accordance with 15 U.S.C. 1451 et. seq.
- (d) If a dispenser is so designed that two or more hose/nozzles which are connected to a common housing dispense more than one type or grade of product, means shall be provided to clearly indicate the identity of the product being dispensed from each hose/nozzle.

Statutory Authority G.S. 119-27.

SECTION .0800 - OXYGENATED GASOLINE

.0801 PURPOSE AND APPLICABILITY

- (a) This Section sets forth oxygenated gasoline standards for areas designated by the Environmental Management Commission as carbon monoxide nonattainment areas pursuant to Title II of the 1990 Amendments to the Federal Clean Air Act and regulations promulgated by the

United States Environmental Protection Agency. The requirements of this Section apply to all gasoline offered for sale, sold, exchanged, or dispensed as a fuel for use in a spark ignition engine in a control area during a control period, except for gasoline intended for use in aircraft.

(b) The requirements of this Section apply to the following control areas:

- (1) The Raleigh/Durham Metropolitan Statistical Area consisting of Durham, Franklin, Orange, and Wake Counties;
- (2) The Greensboro/Winston-Salem/High Point Metropolitan Statistical Area consisting of Davie, Davidson, Forsyth, Guilford, Randolph, Stokes, and Yadkin Counties;
- (3) Any other areas designated by the Environmental Management Commission.

The requirements of this Section do not apply to areas which have been removed from designation as carbon monoxide nonattainment areas by the Environmental Management Commission.

(c) The control period is a four month period beginning November 1 and running through the last day of February of the following year.

(d) Gasoline in storage within the counties identified in Paragraph (b) of this Rule prior to November 1 at a retail outlet or wholesale purchaser-consumer dispensing facility having total gasoline tank capacity of less than 550 gallons or a total weekly dispensing rate of less than 550 gallons is exempt from the requirements of this Section. However, any gasoline supplied to the retail outlet or wholesale purchaser-consumer facility during the control period shall comply with the requirements of this Section.

(e) If the Administrator of the U.S. Environmental Protection Agency delays the effective date of the oxygenated gasoline requirements then the provisions of this Section do not apply during such period.

Statutory Authority G.S. 119-26.

.0802 OXYGEN CONTENT

In addition to the requirements in Section .0200 of this Chapter, the gasoline identified in Rule .0801 of this Section shall have an oxygen content of not less than 2.7 percent by weight.

Statutory Authority G.S. 119-26.

.0803 RECORD KEEPING AND TRANSFER REQUIREMENTS

- (a) All parties in the gasoline distribution network, as described in this Rule, shall maintain records containing compliance information enumerated or described in this Rule. These records

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shall be retained by the regulated parties for at least one year.

- (1) Control area terminal operators. Persons who own, lease, operate or control gasoline terminals which serve control areas shall maintain records containing the following information:
 - (A) The owner(s) of each batch of gasoline;
 - (B) For all batches or truckloads of gasoline leaving the terminal, the volume of gasoline, the type of oxygenate(s), and minimum oxygen content of the batch or truckload;
 - (C) Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;
 - (D) The name and address of the party to whom the gasoline was sold or transferred and the date of the sale or transfer.
- (2) Control area oxygenate blenders. Persons who own, lease, operate or control facilities at which the oxygen content of gasoline is altered and which serve control areas shall maintain records containing the following information:
 - (A) The owner(s) of each batch of gasoline;
 - (B) For all batches or truckloads of oxygenated gasoline leaving the terminal, the volume of oxygenated gasoline, the type of oxygenate(s), and minimum oxygen content of the batch or truckload;
 - (C) Destination of each tank truck sale or batch of gasoline, that is, whether it was within a control area or not;
 - (D) The name and address of the party to whom the oxygenated gasoline or oxygenate(s) was sold or transferred and the date of the sale or transfer.
- (3) Retailers and wholesale purchaser-consumers within a control area must maintain the following records:
 - (A) The names and addresses of the parties from whom all shipments of gasoline were purchased or received, and the dates when they were received;
 - (B) Data on every shipment of gasoline bought, sold or transported, including:
 - (i) Volume of each shipment;
 - (ii) Type of oxygenate(s) and oxygen content;
 - (iii) Destination of each sale or shipment of gasoline, that is, whether it is intended for use within a control area.

(b) Each time that physical custody or title of gasoline destined for a control area changes hands other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee, in addition to, or as part of, normal bills of lading, invoices, etc., document(s) which clearly and conspicuously contains the following information on that shipment:

- (1) The date of the transfer;
- (2) The name and address of the transferor;
- (3) The name and address of the transferee;
- (4) The volume of gasoline which is being transferred;
- (5) The proper identification of the gasoline as non-oxygenated or oxygenated;
- (6) Type of oxygenate(s) and minimum oxygen content.

Such document(s) shall accompany every shipment of gasoline to a control area after it has been dispensed by a terminal or control area oxygenate blending facility, or the information shall be included in the normal paperwork which is generated subsequent to the shipment of gasoline from a terminal or control area oxygenate blending facility.

Statutory Authority G.S. 119-26.

.0804 GASOLINE DISPENSER LABELING

(a) Each gasoline dispenser stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed during the control period with a legible and conspicuous label which contains the following statement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide emissions from motor vehicles."

(b) The posting of the statement in Paragraph (a) of this Rule shall be in block letters of no less than 36-point bold type; in a color contrasting with the intended background. The label shall be placed in the vertical surface of the dispenser front panel in a position clear and conspicuous from the driver's position.

(c) The retailer shall be responsible for compliance with the labeling requirements of this Section.

Statutory Authority G.S. 119-27.

.0805 SAMPLING, TESTING AND OXYGEN CONTENT CALCULATIONS

(a) Sampling methodologies used to determine compliance with this Section shall be those set forth in Appendix D of Title 40, Part 80 of the Code of Federal Regulations, which is adopted by reference, including subsequent amendments and editions. Copies of the Code of Federal Regulations may be obtained from the Government Printing Office, Washington, D.C. at a cost determined by that office.

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(b) Determination of the oxygenate(s) and their volume in gasoline shall be in accordance with test method ASTM D 4815 as set forth in ASTM specification D 4814.

(c) Oxygen content shall be calculated by multiplying the mass concentration of each oxygenate in gasoline by the oxygen molecular weight contribution of the oxygenate. All volume measurements shall be adjusted to 60 degrees Fahrenheit. For the purpose of calculating oxygen content, the following oxygen molecular weight contributions shall be used.

Oxygenate	Oxygen molecular weight contribution	Specific gravity at 60 degrees F
Methyl Alcohol	0.4993	0.7963
Ethyl Alcohol	0.3473	0.7939
n-Propyl Alcohol	0.2662	0.8080
Isopropyl Alcohol	0.2662	0.7899
n-Butyl Alcohol	0.2158	0.8137
Isobutyl Alcohol	0.2158	0.8058
sec-Butyl Alcohol	0.2158	0.8114
tertiary-Butyl Alcohol	0.2158	0.7922 ^A
Methyl tertiary-Butyl Ether	0.1815	0.7460
Ethyl tertiary-Butyl Ether	0.1566	0.7452
tertiary-Amyl Methyl Ether	0.1566	0.7752
tertiary-Hexyl Methyl Ether	0.1377	0.7860

^A Extrapolated, below freezing temperature.

Statutory Authority G.S. 119-26.

.0806 COMPLIANCE AND ENFORCEMENT

(a) During the first 10 days of the control period, gasoline at retail and wholesale purchaser-consumer facilities will be deemed in compliance provided documentation on all deliveries during the five days preceding the control period indicates that all gasoline delivered to said facilities complied with Rule .0802 of this Section.

(b) Gasoline found not to be in compliance with the requirements of this Section will be ordered off sale or removed from use.

- (1) The gasoline may be returned to sale or use once the owner has blended the gasoline with additional oxygenates sufficient to comply with the oxygen content standard of this Section, provided this procedure is supervised by the director and is in accordance with G.S. 119-27.
- (2) The gasoline may be transferred for use outside a control area, provided the record keeping requirements of Rule .0803 of this Section are followed and the transfer procedure is supervised by the director in accordance with G.S. 119-27.

Statutory Authority G.S. 119-26; 119-27.

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tends to amend rule(s) cited as 2 NCAC 52B .0401, .0405; repeal rule(s) cited as 2 NCAC 52B .0402 - .0404; and adopt rule(s) cited as 2 NCAC 52B .0406 - .0413.

The proposed effective date of this action is August 3, 1992.

The public hearing will be conducted at 10:00 a.m. on June 15, 1992 at the Gov. James B. Hunt, Jr. Horse Complex (Restaurant), 4601 Trinity Rd., Raleigh, NC 27607.

Reason for Proposed Actions: To prevent the spread of equine infectious anemia, a disease that affects horses and other equine.

Comment Procedures: Interested persons may present their statements either orally or in writing at the public hearing or in writing prior to the hearing by mail addressed to David S. McLeod, Secretary of the North Carolina Board of Agriculture, P.O. Box 27647, Raleigh, NC 27611.

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0400 - EQUINE INFECTIOUS ANEMIA (EIA)

.0401 DEFINITIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Board of Agriculture in-

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The following definitions are in effect throughout Section .0400 of this Subchapter:

- (1) **Horse Equine.** Any member of the equine family, including horses, ponies, mules, asses and other equines;
- (2) **Reactor.** A horse An equine over nine six months of age that reacts positively to an approved test for equine infectious anemia;
- (3) **Approved Test.** Any test for equine infectious anemia approved by the State Veterinarian; At present, an approved test is one recognized by Veterinary Services, APHIS, USDA;
- (4) **Date of Test.** Date blood sample is collected from the horse equine;
- (5) **Licensed Accredited Veterinarian.** A veterinarian licensed to practice in North Carolina by the North Carolina Veterinary Medical Board;
- (6) **Exposed Horse.** A horse Equine. An equine which the State Veterinarian or his authorized representative has reasonable grounds to believe has been exposed to equine infectious anemia; A horse An equine shall be considered exposed when in the professional judgment of a state or federally employed, or accredited, veterinarian designated by the State Veterinarian, the horse equine has been exposed. A premise will may be approved by the State Veterinarian for the permanent quarantine of a horse an equine which is positive to an official test for equine infectious anemia when it can be determined that other horses equine will not be exposed to the disease;
- (7) **Division.** Veterinary division of the North Carolina Department of Agriculture;
- (8) **Dealer.** Any person who buys horses equine for his own account for the purpose of resale, or for the account of others.

Statutory Authority G.S. 106-405.17.

.0402 DISPOSITION OF REACTORS

(a) Any horse which is positive to an approved test for equine infectious anemia shall be placed under permanent quarantine on its home farm or other premise approved by the State Veterinarian, provided the State Veterinarian may authorize the movement of an affected animal to an approved facility for use in research or to state or federal approved slaughter facility. Reactors shall be identified within 30 days of a positive test by a permanent lip tattoo number prescribed by the State Veterinarian at the expense of the owner or by other means of iden-

tification acceptable to the State Veterinarian at public expense.

(b) The State Veterinarian will authorize the movement of an affected animal to an approved facility for use in research or to a state or federally approved slaughter facility when in his judgment it can be done without risking the exposure of other animals. Lip tattoos with figures at least one inch high or a brand on the left side of the neck with three inch figures and consisting of SSA followed by an assigned serial number are approved by the State Veterinarian for identifying horses which are positive to an official test for equine infectious anemia.

Statutory Authority G.S. 106-405.17.

.0403 EXPOSED HORSES

Horses which have been exposed to the disease shall be placed under quarantine until they have passed a negative test for equine infectious anemia following a post exposure interval approved by the State Veterinarian.

Statutory Authority G.S. 106-405.17.

.0404 REPORT OF TEST RESULTS

All test results shall be reported to the office of the State Veterinarian. Tests conducted at an approved laboratory within the state shall be reported on official forms supplied by the Division. Licensed veterinarians submitting samples for testing in U.S. Department of Agriculture approved laboratories outside of North Carolina shall supply a copy of the test record to the office of the State Veterinarian within five days upon receipt of the test results from the testing laboratory.

Statutory Authority G.S. 106-405.17.

.0405 FEES FOR BLOOD TEST

(a) A person submitting a blood sample to be tested for EIA equine infectious anemia (EIA) shall pay a fee of three dollars (\$3.00) four dollars (\$4.00) per sample.

(b) The Division shall not test a blood sample for EIA unless the payment is submitted along with the sample.

Statutory Authority G.S. 106-405.17.

.0406 EIA TEST REQUIRED

(a) All equine more than six months of age entering North Carolina for any purpose other than for immediate slaughter shall be accompanied by a copy of the certificate of test from a laboratory approved by the USDA showing the

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animal to be negative to an approved test for equine infectious anemia (EIA) within the past 12 months. (See 2 NCAC 52B .0206 for other importation requirements.)

(b) No equine shall be sold, offered for sale, traded, given away, or moved for the purpose of change of ownership unless accompanied by the original official negative test for EIA administered within six months prior to sale or movement, except that equine which are offered for sale at auction markets or sales may have a blood sample drawn at the market by the market's veterinarian at the seller's expense. In such cases, the equine may be sold and transferred contingent upon receipt of an official negative EIA test.

(c) An EIA test shall not be required for:

- (1) North Carolina equine that are intended for slaughter and are branded and sold in accordance with Rule .0412 of this Section; and
- (2) Equine from other states that are delivered directly to a livestock market and branded and sold for slaughter in accordance with Rule .0412 of this Section. Equine entering pursuant to this provision must be accompanied by a waybill. Out-of-state equine must be declared prior to entry into the sale barn.

Statutory Authority G.S. 106-405.17.

.0407 TESTING FOR EIA

(a) Equine tested for equine infectious anemia (EIA) must be completely and accurately identified by a licensed, accredited veterinarian, using the official test forms provided by the office of the State Veterinarian.

(b) Only one chart shall be utilized by the testing veterinarian for each equine to be tested. Any distinctive markings and their location on the animal such as brands, tattoos, stars, snips, stockings, or other markings shall be noted on the official chart.

(c) Equine receiving on-farm or private treaty test shall not be sold or ownership otherwise transferred until the results of the equine infectious anemia test performed on the animal are returned. Positive test results shall automatically result in the quarantine of the animal without further notice at the premises of the owner or where the test was conducted.

(d) All test results shall be reported to the office of the State Veterinarian. Tests conducted at an approved laboratory within the state shall be reported on official forms supplied by the Division. Licensed, accredited veterinarians submitting samples for testing in U.S. Department of Agriculture approved laboratories outside of North

Carolina shall supply a copy of the test record to the office of the State Veterinarian within five days upon receipt of the test results from the testing laboratory.

(e) The owner or manager of a market or sale shall announce, prior to the sale or auction, that all nonslaughter equines will be tested. Each buyer of a nonslaughter equine at the sale or auction shall sign an agreement to maintain such equine at a specified location until notified of the results of the test. Equine that prove negative to the test may move in normal trade channels. Owners of equine that react to the test must comply with Rule .0408 of this Section.

Statutory Authority G.S. 106-405.17.

.0408 POSITIVE REACTORS

(a) Equine testing positive to an approved test for equine infectious anemia (EIA) may have a confirmatory retest by a representative of the State Veterinarian within 15 days of the initial test. If there is no retest within 15 days from notification, the right to retest is forfeited and the equine shall be branded immediately.

(b) Reactors must be branded on the left side of the neck with the characters '55A' and the official reactor number assigned by the Division. The owner of the reactor must submit the equine for branding by a representative of the State Veterinarian within 15 days of the confirmatory test.

(c) A reactor shall be isolated or sold for slaughter within seven days of branding. Reactors shall be subject to the following disposition, at the option of the owner:

- (1) With approval of the State Veterinarian or his designated representative, the equine may be sold for slaughter to bona fide slaughter buyers. EIA reactors must be permitted on VS Form 1-27 by a representative of the State Veterinarian for movement from farm to an approved slaughter establishment or research facility when, in the State Veterinarian's judgment, it can be done without risk of exposure of other equine;

- (2) Quarantine of the infected, branded, equine until death in an isolation facility on the owner's premises or elsewhere, approved by an authorized representative of the State Veterinarian. A written quarantine will be issued for each equine. Minimum standards for an approved isolation facility shall be a plot or pasture located a minimum of 880 yards from any other equine enclosure, or other equine, except another known EIA reactor.

PROPOSED RULES

Owners of infected, branded equine shall not sell, barter, trade or give away these equine except as provided in this Rule.

Statutory Authority G.S. 106-405.17.

.0409 ADJACENT EQUINE

When an equine is found positive by an approved equine infectious anemia (EIA) test and an EIA retest by state personnel, all equine on the same premises (farm, pasture, or stable), and all other equine located on adjacent farms, pastures, or stables within 880 yards shall be required to be officially tested by state regulatory personnel or a licensed, accredited veterinarian. All exposed equine on the same farm shall be quarantined until officially tested and found negative to the EIA test 60 days after removal of the reactor.

Statutory Authority G.S. 106-405.17.

.0410 MARKET AND SALE RESPONSIBILITY

(a) Livestock markets and all others conducting sales of equine shall:

- (1) Send a written request for approval of all sales to the State Veterinarian at least two weeks prior to sale; and
- (2) Obtain written approval from the State Veterinarian prior to conducting the sale.
- (b) Livestock markets or equine sales offering to provide equine infectious anemia (EIA) testing for North Carolina equine must employ a licensed, accredited veterinarian, approved by the State Veterinarian.
- (c) Livestock markets or sales that have approved, permanent facilities and staff, including an approved licensed, accredited veterinarian, may handle North Carolina equine that do not have a negative test, provided each such North Carolina equine is tested as provided in these Rules.
- (d) Livestock markets and all others conducting sales of equine shall have check-in procedures, including at least the following:

- (1) See that the correct name and mailing address of the owner is on the "check-in" form, along with the license number of the vehicle that transported the animal;
- (2) Apply a backtag or paint number at "check-in" and note it on the "check-in" form;
- (3) See that all EIA test records are collected and presented to the market veterinarian or representative of the State Veterinarian for verification prior to the sale.
- (e) Equine shall be presented to the market or sale veterinarian if testing is required, and assist-

ance shall be provided for drawing blood samples for the EIA test.

(f) The market or sale management is responsible for collecting the fee established by 2 NCAC 52B .0405 for each equine tested for EIA.

(g) The market or sale management shall maintain records of sales for a minimum of two years, so that animals that react positively to the EIA test may be traced.

(h) Those managing the sale shall not permit the sale of equine on the premises except through the market or sale.

(i) Non-compliance with these Rules is grounds for revocation of approval to conduct sales.

Statutory Authority G.S. 106-405.17.

.0411 MARKET OR SALE VETERINARIANS

(a) Market or sale veterinarians shall:

- (1) Collect blood samples of five cubic centimeters in an approved tube with proper identification of each equine presented for test;
- (2) Properly identify each equine tested on Department of Agriculture forms as to name, age, sex, breed, color and markings, brands, tattoos, scars, etc.; and
- (3) Mail blood and charts to Rollins veterinary diagnostic laboratory within 12 hours of sale.
- (b) Each market veterinarian involved in the equine infectious anemia (EIA) program shall have a signed approval from the State Veterinarian.

Statutory Authority G.S. 106-405.17.

.0412 EIA TEST WAIVER/SLAUGHTER

(a) Equine sold at the stockyard for slaughter may have the equine infectious anemia (EIA) test waived upon presenting the equine for branding.

(b) Buyers who purchase equine for slaughter shall be registered and bonded under the Packers and Stockyards Act.

(c) Market or sale operators who wish to handle the sale of equine for slaughter without EIA testing must obtain prior approval from the State Veterinarian and sign an agreement to comply with the terms of this Rule and any specific terms that the State Veterinarian may direct.

Statutory Authority G.S. 106-405.17.

.0413 RIGHT OF ENTRY

The State Veterinarian or his authorized representative shall have the authority to:

PROPOSED RULES

- (1) Monitor the "check-in" personnel of the market or sale to see that the sellers are submitting the necessary equine infectious anemia (EIA) test charts and that they match the description of the equine admitted;
- (2) Review the "check-in" records to see that vehicle license numbers of sellers are recorded;
- (3) Check for the proper placement of backtags and the "s" branding of equine not being tested;
- (4) Monitor for the safe keeping of records;
- (5) Monitor to prevent unauthorized sales of equine that do not meet requirements on the premises other than through the auction;
- (6) Inspect for compliance with the rules of the Department of Agriculture; and
- (7) Review and make copies of all sale transactions relating to change of ownership.

Note: Violation of these Rules is a misdemeanor under G.S. 106-405.19, and violators may be fined, imprisoned, or both, in the discretion of the court.

Statutory Authority G.S. 106-405.17.

TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Aging intends to adopt rule(s) cited as 10 NCAC 22R .0101, .0201 - .0203, and .0301 - .0302.

The proposed effective date of this action is August 1, 1992.

The public hearing will be conducted at 2:00 p.m. on June 2, 1992 at the Division of Aging, 693 Palmer Dr., Room 127, Raleigh, N.C. 27615.

Reasons for Proposed Actions: Implementation of Home and Community Care Block Grant for Older Adults.

Comment Procedures: Written comments may be received by the Director of the Division of Aging through June 15, 1992. Verbal comments will be heard at the public hearing.

CHAPTER 22 - AGING

SUBCHAPTER 22R - HOME AND COMMUNITY CARE BLOCK GRANT FOR OLDER ADULTS

SECTION .0100 - ALLOCATION OF BLOCK GRANT FUNDS

.0101 ALLOCATION OF BLOCK GRANT FUNDING THROUGH AREA AGENCIES ON AGING

The Division of Aging shall annually allocate Block Grant funding to Area Agencies on Aging as specified in Subchapter 22G Rule .0906 of this Chapter and Chapter 1095, Section 4, 1988 Session Laws.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c); 42 U.S.C. 3000 et. seg..

SECTION .0200 - BASIS FOR GRANTING BLOCK GRANT FUNDS TO COUNTIES

.0201 DEFINITIONS

(a) "County Block Grant Advisory Committee" means a committee, appointed annually by the Board of County Commissioners, that represents a broad range of aging interest in the county. The committee serves to build local consensus for the County Funding Plan and to function as a resource for the County Lead Agency for Planning and Coordination by obtaining input from service provider interests, and older consumers and their families.

(b) "County Funding Plan" means the format developed by the Division of Aging in which counties identify the County Lead Agency for Planning and Coordination, service providers, services, and budgetary data for the provision of Home and Community Care Block Grant for Older Adults services in the county during the State Fiscal Year.

(c) "County Lead Agency for Planning and Coordination" means a public or private non-private agency or office which is designated annually by the Board of County Commissioners for the purpose of developing the County Funding Plan for the provision of services through the Block Grant. County Funding Plan development responsibilities include directing the work of the County Block Grant Advisory Committee, facilitating a public hearing for the County Funding Plan prior to approval by the Chairman of the Board of Commissioners, and ensuring that the approved County Funding Plan meets all requirements as specified by the Division of Aging prior to submission to the Area Agency on Aging.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

.0202 COUNTY FUNDING PLANS

PROPOSED RULES

(a) The County Lead Agency for Planning and Coordination shall provide the County Budget Officer with a preliminary County Funding Plan which, at a minimum, specifies Home and Community Care Block Grant for Older Adults services, funding levels, and required local matching amounts by April 30 of each year.

(b) Area Agencies on Aging shall grant Home and Community Care Block Grant for Older Adults funding to Counties on the basis of a County Funding Plan that has been approved by the Chairman of the Board of Commissioners and submitted to the Area Agency on Aging.

(c) The approved County Funding Plan shall be wholly a part of the Grant Agreement between the County and the Area Agency on Aging for the provision of aging services through the Home and Community Care Block Grant for Older Adults.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

.0203 PUBLIC HEARING FOR COUNTY FUNDING PLAN

(a) With the participation of the County Block Grant Advisory Committee, the County Lead Agency for Planning and Coordination shall hold a public hearing on the proposed County Funding Plan prior to approval by the Chairman of the County Board of Commissioners.

(b) The hearing shall be publicized in a manner that encourages public participation and comments received at the hearing will be given consideration in finalizing the County Funding Plan.

(c) Minutes of the public hearing shall be provided with the County Funding Plan.

(d) The public hearing shall be conducted prior to June 30 of each year.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

SECTION .0300 - PRIORITY FOR THE RECEIPT OF BLOCK GRANT SERVICES

.0301 DEFINITIONS

(a) "Activities of daily living" means functions which include: eating, dressing, bathing, toileting, bowel and bladder control, transfers, ambulation, and communication, such as speaking, the written word, signing, and communication devices.

(b) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting harm, pain, or

mental anguish or deprivation by a caretaker of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.

(c) "Exploitation" means the illegal or improper act or process of a caretaker using the resources of an older adult for monetary or personal benefit, profit, or gain.

(d) "Instrumental activities of daily living" means functions which include: meal preparation, medication intake, cleaning, money management, phone use, laundering, reading, writing, shopping and going to necessary activities.

(e) "Neglect" means the failure to provide for oneself the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

.0302 CLIENT PRIORITIES FOR RECEIPT OF SERVICES

(a) Once service providers have determined that individuals meet eligibility criteria for a given Home and Community Care Block Grant for Older Adults service, individuals shall be served in the following priority order:

(1) Older adults for whom the need for Adult Protective Services has been substantiated by the local department of social services and the service is needed as part of the adult protective service plan.

(2) Older adults who are at risk of abuse, neglect, or exploitation.

(3) Older adults with extensive impairments in activities of daily living (ADL's), or instrumental activities of daily living (IADL's), who are at risk of institutionalization substitute care.

(4) Older adults with extensive ADL or IADL impairments.

(5) Older adults with less extensive ADL or IADL impairments.

(6) Well older adults.

(b) Service providers must establish a process to screen prospective clients for the purpose of determining priority for receipt of service(s) in accordance with the criteria specified in 10 NCAC 22R .0302(a).

Statutory Authority G.S. 143B-181.1(a)(11); 143B-181.1(c).

TITLE 11 - DEPARTMENT OF INSURANCE

PROPOSED RULES

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Insurance intends to amend rule(s) cited as 11 NCAC 12 .0820 - .0822, .0824, .0830.

The proposed effective date of this action is August 1, 1992.

The public hearing will be conducted at 10:00 a.m. on June 1, 1992 at the Dobbs Building, 3rd Floor Hearing Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Reason for Proposed Actions: Changes required by Federal law.

Comment Procedures: Written comments may be sent to Sue Goff, Life and Health Division, 430 N. Salisbury Street, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Sue Goff at (919) 733-5060 or Ellen K. Sprenkel at (919) 733-4529.

CHAPTER 12 - LIFE AND HEALTH DIVISION

SECTION .0800 - MEDICARE SUPPLEMENT INSURANCE

.0820 MINIMUM BENEFIT STANDARDS BEFORE JANUARY 1, 1992

No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

(1) General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(a) A Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six months from the effective date of coverage because the loss involved a preexisting condition. The policy or certificate shall not define a pre-existing condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

(b) A Medicare supplement policy or certificate shall not indemnify against losses

resulting from sickness on a different basis than losses resulting from accidents.

(c) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

(d) A "noncancelable," "guaranteed renewable," or "noncancelable and guaranteed renewable" Medicare supplement policy shall not:

(i) provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(ii) be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(e) Except as authorized by the Commissioner of this state, an issuer shall neither cancel nor fail to renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(f) If a group Medicare supplement policy is terminated by the group policyholder and not replaced as provided in Subparagraph (1)(h) of this Rule, the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) an individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) an individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in 11 NCAC 12 .0835(2).

(g) If membership in a group is terminated, the issuer shall:

(i) offer the certificateholder such conversion opportunities as are described in Subparagraph (1)(f) of this Rule; or

(ii) at the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(h) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same

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policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

(i) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

(2) Minimum Benefit Standards.

(a) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(b) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(c) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(d) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of 90 percent of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(e) Coverage under Medicare Part A for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(f) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [one hundred dollars (\$100.00)]. Effective January 1, 1990, coverage for the coinsurance amount (20 percent) of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the

Medicare deductible amount is included within this provision;

(g) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Statutory Authority G.S. 58-2-40; 58-54-10; 58-54-15.

.0821 STANDARDS FOR CLAIMS PAYMENT

(a) An issuer shall comply with Section 1882(c)(3) of the Social Security Act [as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA 1987), P.L. 100-203] by:

- (1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;
- (2) Notifying the participating physician or supplier and the beneficiary of the payment determination;
- (3) Paying the participating physician or supplier directly;
- (4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;
- (5) Paying user fees for claim notices that are transmitted electronically or otherwise; and
- (6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

(b) Compliance with the requirements set forth in Paragraph (a) of this Rule shall be certified on the Medicare supplement insurance experience reporting form on page 47 of the Annual Statement.

Statutory Authority G.S. 58-2-40; 58-54-15.

.0822 LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM

(a) Loss Ratio Standards:

- (1) A Medicare supplement policy form or certificate form shall not be delivered or

issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(A) At least 75 percent of the aggregate amount of premiums earned in the case of group policies, or

(B) At least 65 percent of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For the purposes of Subparagraph (a)(1) of this Rule, group policies sold or solicited on an individual basis by mail or mass media advertising shall be considered to be group policies.

(b) Refund or Credit Calculation:

(1) An issuer shall collect and file with the Commissioner by May 31 of each year the data contained in the reporting form for each type in a standard Medicare supplement benefit plan. This information shall be filed with the Life and Health Division. The reporting form shall be in the format prescribed by the NAIC in Appendix A of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file at the North Carolina Department of Insurance. Copies may be obtained from the Department at a cost of two dollars and fifty cents (\$2.50) each.

(2) If on the basis of the experience as reported the benchmark ratio since inception (ratio 1) exceeds the adjusted experience ratio since inception (ratio 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based.

(c) Annual Filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued in this state shall file annually its rates, rating schedule and supporting documentation, including ratios of incurred losses to earned premiums by policy duration, for approval by the Commissioner in accordance with the filing requirements and procedures prescribed by statute or rule. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio that is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the Commissioner, in accordance with the applicable filing procedures of this state:

(1) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

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(A) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate that will conform with minimum loss ratio standards for Medicare supplement policies, and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein should be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(B) If an issuer fails to make premium adjustments acceptable to the Commissioner, the Commissioner may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by this Rule.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

(d) Public Hearings. The Commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form, if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in the manner prescribed by statute.

Statutory Authority G.S. 58-2-40; 58-54-20.

.0824 REQUIRED DISCLOSURE PROVISIONS

(a) General Rules.

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provisions must be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic re-

newal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations".

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Issuers of accident and health policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to persons eligible for Medicare by reason of age shall provide to such applicants a copy of the Medicare Sup-

plement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration in a type size no smaller than 12-point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this Rule. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

(b) Notice Requirements.

(1) As soon as practicable, but no later than 30 days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificate holders of modifications it has made to Medicare supplement policies or certificates in a format acceptable to the Commissioner. Such notice shall:

(A) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(B) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

(c) Outline of coverage requirements for Medicare supplement policies.

(1) Issuers shall provide an outline of coverage to each applicant at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or

certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than 12 point type, immediately above the company name:

"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this Rule consists of four parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed in Subparagraph (c)(4) of this Rule in no less than 12-point type. All plans A-J shall be shown on the cover page, and the plan or plans offered by the issuer shall be prominently identified. Premium information for the plan or plans offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for each plan that is offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The outline of coverage shall be in the language and format as prescribed by the NAIC in Section 16C(4) of the Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act, as adopted July 30, 1991, including any subsequent amendments and editions. A copy of this format is on file with the North Carolina Department of Insurance. Copies may be obtained at a cost of fourteen dollars (\$14.00) each from the Life and Health Division, 430 N. Salisbury Street, Raleigh, North Carolina 27611.

(d) Notice regarding policies or certificates which are not Medicare supplement policies. Any accident and health insurance policy or certificate, other than a Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. 1395 et.seq.), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in ~~44 NCAC 42 .0816(2)~~, 11 NCAC 12 .0816(b), issued for delivery in this state to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a

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Medicare supplement policy or certificate. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy or certificate delivered to insureds. Such notice shall be in no less than 12 point type and shall contain the following language:

"**THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CERTIFICATE].** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

Statutory Authority G.S. 58-2-40; 58-54-25.

.0830 PROHIBITIONS IN REPLACEMENT POLICIES OR CERTIFICATES

(a) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate to the extent such time was spent under the original policy.

(b) If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate that has been in effect for at least six months, the replacing policy shall not provide any time period applicable to pre-existing conditions, waiting periods, elimination periods, or probationary periods.

(c) A separate charge may not be made to the applicant for the waiver of the pre-existing condition or other waiting period in a replacement policy.

Statutory Authority G.S. 58-2-40.

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the General Statutes Commission intends to amend rule(s) cited as 12 NCAC 8 .0103, .0104, and .0105; adopt rule(s) cited as 12 NCAC 8 .0109, .0204 and .0506.

The proposed effective date of this action is August 3, 1992.

Instruction on how to demand a public hearing: A request for a public hearing must be in writing and must be submitted to Floyd Lewis, Revisor of Statutes, P.O. Box 629, Raleigh, North Carolina 27602-0629 by June 1, 1992.

Reason for Proposed Action: It is necessary to revise existing rules on meetings, procedures and records to reflect changed needs and practices, update methods, and eliminate unnecessary material. It is necessary to adopt new rules to inform the public of the Commission's policies respecting drafting committees and its requirements for petitions for rule making and declaratory judgments.

Comment Procedures: The record of consideration will be open for receipt of written comments from May 15, 1992 through June 15, 1992. Such comments must be mailed to Floyd Lewis, Revisor of Statutes, P.O. Box 629, Raleigh, North Carolina 27602-0629.

CHAPTER 8 - GENERAL STATUTES COMMISSION

SECTION .0100 - RULES OF ORGANIZATION

.0103 MEETINGS

(a) Regular Meetings. The commission holds not less than two regular meetings each year, of which one is held in June and one in November. The regular June and November meetings of the commission are held in Raleigh, but the commission may provide for the holding of other meetings from time to time at any other place or places in the state. Regular meetings of the General Statutes Commission shall be held at 10:00 a.m. in the Attorney General's Office at Raleigh on the first Friday of each month. Whenever the business of the commission requires, the commission shall recess on Friday and continue its meeting on Saturday morning following. The chairman of the commission is authorized to postpone or otherwise vary the time of the meeting whenever unusual circumstances make it expedient or desirable. The commission shall hold regular meetings on the first Friday of each month except July and August, unless the commission decides at one meeting to select a different date for the next regular meeting. In addition, the chairman is authorized, consistent with G.S. 164-15, to postpone, eliminate, or otherwise vary the date of a meeting whenever circumstances make it expedient or desirable. The secretary or his designee shall arrange the place for each meeting and shall notify members of the commission by mail or by telephone of the time, location, and date of each meeting.

(b) Special Meetings. Special meetings may be called by the chairman or by any two members of the commission. Notice of any special meeting of the commission shall be given to the members of the commission by letter mailed or

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by telephone not less than 10 days before the date fixed therefor 48 hours before the scheduled meeting time and shall state the date, hour, and place of the meeting. Attendance at a meeting without objection waives any right to object to lack of proper notice. Such Notice shall be mailed given by the secretary, except that if the position of secretary is vacant the notices notice may be mailed given by the person or persons calling the meeting. All special meetings shall be held in Raleigh, unless the commission shall provide for a different place for any particular meeting. At any special meeting any business may be transacted that might be transacted at a regular meeting except the election of officers of the commission.

(c) Quorum. A majority of the members shall constitute a quorum. If a quorum shall fail fails to attend any regular meeting of the commission, the members present at the time and place fixed for such regular the meeting may adjourn the meeting to another time. and such notice of the adjourned meeting shall be given to all members of the commission as is required with respect to special meetings, except that if the position of secretary is vacant such notice may be given by the members present for the meeting which is so adjourned. The secretary or other person designated at the meeting shall notify the members who were not present of the new time and place.

(d) Open Meetings. Meetings of the commission shall be open to the public.

(e) Order of Business. The order of business of the commission shall be as stated in the agenda, subject to the vote of the commission or the direction of the chairman.

Statutory Authority G.S. 164-15.

.0104 PROCEDURES

(a) Sources. The commission may act on suggestions from any source in regard to any of its duties.

(b) Research, Drafting. In addition to its own efforts the commission may utilize any of the following or a combination thereof for its research and drafting:

- (1) the revisor, or
- (2) a drafting committee appointed from members or non members nonmembers or both, who shall receive an appropriate honorarium, or
- (3) an individual or individuals appointed for a specific project. who are to be appropriately compensated.

With the approval of the commission a request may be made to other individuals or groups for

their comments in regard to a draft or the revision in general.

(c) Review, Adoption. The commission shall conduct a line by line review of any proposal it recommends to the General Assembly for adoption.

(d) Memorandum of Law. Except in an unusual circumstance each proposal recommended to the General Assembly shall be accompanied by a memorandum of law.

(e) Introduction. The proposals recommended to the General Assembly will normally be introduced by a legislative member or members of the commission.

Statutory Authority G.S. 164-13; 164-17.

.0105 RECORDS

(a) Maintenance, Custody. The revisor shall keep and maintain the records of the commission. Copies of each proposal recommended to the General Assembly as well as the accompanying memorandum of law shall be supplied upon request to any individual, provided that The commission may require reimbursement for copying and mailing expenses.

(b) Access. Access to the records of the General Statutes Commission shall be as provided in G.S. 132-6.

Statutory Authority G.S. 164-17.

.0109 DRAFTING COMMITTEES

(a) Each drafting committee shall comply with the provisions of G.S. 143-318.10 and 143-318.11.

(b) The revisor or his designee shall serve, ex officio, as a member of each drafting committee.

Statutory Authority G.S. 164-13; 164-17.

SECTION .0200 - PETITIONS FOR RULES

.0204 PETITIONS FOR RULEMAKING

(a) Any person may petition the commission to adopt a new rule or to amend or repeal an existing rule by sending a written petition for rulemaking to the commission at the commission's mailing address. The petition must be entitled "Petition for Rulemaking" and must include the following information:

- (1) the name and address of the person submitting the petition;
- (2) a citation to any rule for which an amendment or repeal is requested;
- (3) a draft of any proposed new rule or amended rule;

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- (4) an explanation for the request, with any supporting information the petitioner believes is relevant and wishes the commission to consider; and
- (5) an identification of the persons or class of persons most likely to be affected by the proposed action.

(b) The commission shall decide whether to grant or deny the petition and may request additional information. When the commission denies a petition, the notice of denial shall state the reason.

Statutory Authority G.S. 164-17; 150B-20.

SECTION .0500 - DECLARATORY RULINGS

.0506 DECLARATORY RULINGS

- (a) All petitions for declaratory rulings shall be in writing and shall be sent to the commission at its mailing address. Each petition shall be entitled "Petition for Declaratory Ruling" and shall include the following information:
 - (1) the name and address of the petitioner;
 - (2) the statute or rule to which the petition relates;
 - (3) a concise statement of the manner in which the petitioner has been or will be injured or adversely affected by the statute or rule;
 - (4) if the petitioner wishes to make an oral presentation to the commission on the petition, a statement clearly requesting an opportunity to appear and be heard.
- (b) The commission may refuse to issue a declaratory ruling when:
 - (1) the petition does not comply with this Rule;
 - (2) the commission has previously issued a declaratory ruling on substantially similar facts;
 - (3) the commission has previously issued a final agency decision in a contested case on substantially similar facts;
 - (4) the facts underlying the request for a declaratory ruling were specifically considered at the time the rule was adopted;
 - (5) the subject matter of the petition is involved in pending litigation;
 - (6) the commission determines for good cause not listed in this Paragraph that issuance of a declaratory ruling is undesirable.

Statutory Authority G.S. 164-17; 150B-4.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Certified Public Accountant Examiners intends to amend rule(s) cited as 21 NCAC 8A .0301; 8G .0101 - .0102, .0205, .0302; 8H .0001.

The proposed effective date of this action is September 1, 1992.

The public hearing will be conducted at 10:00 a.m. on June 22, 1992 at the McKimmon Center, Corner of Western Blvd. and Gorman St., Raleigh, N.C.

***Reason for Proposed Actions:** Petition to the Board by a NC CPA to hold a rule-making hearing and administrative amendments proposed by the Board.*

***Comment Procedures:** Anyone wishing to appear at the hearing should notify the Board's receptionist no later than Friday, June 5, 1992. In order to ensure that all those interested in the rules are allowed to participate in the discussion, callers will be asked to indicate whether they wish to speak at the hearing and, if so, whether they will speak in favor of the amendments or against them. All speakers will be limited to a total of ten minutes. Board members will also review written comments received at the Board office at 1101 Oberlin Road, Ste. 104, Raleigh, NC, by Friday, June 5, 1992.*

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

SUBCHAPTER 8A - DEPARTMENTAL RULES

SECTION .0300 - DEFINITIONS

.0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 8.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired," "Inactive," or "Conditional" status;
- (2) "AICPA" means the American Institute of Certified Public Accountants;

(3) "Applicant" means a person who has applied to take the CPA examination;

(4) "Attest service" means providing:

- (A) any audit,
- (B) any review of a financial statement,
- (C) any compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence, and
- (D) any examination of prospective financial information;

(5) "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;

(6) "Board" means the North Carolina State Board of Certified Public Accountant Examiners;

(7) "Calendar year" means the 12 months beginning January 1 and ending December 31;

(8) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;

(9) "Commission" means compensation, except for a referral fee, for recommending or referring any product or service to be supplied by another person;

(10) "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;

(11) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year;

(12) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;

(13) "CPA" means certified public accountant;

(14) (9) "CPE" means continuing professional education;

(15) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;

(16) "Examination of prospective financial information" means an evaluation by a CPA of:

- (A) a forecast or projection,
- (B) the support underlying the assumptions in the forecast or projection,
- (C) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines, and
- (D) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;

(17) (10) "FASB" means the Financial Accounting Standards Board;

(18) (11) "Firm" means an individual proprietor, a partnership or a professional corporation;

(19) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects to exist and the course of action it expects to take;

(20) (12) "GASB" means the Governmental Accounting Standards Board;

(21) (13) "Inactive," when used to refer to the status of a person, describes one who has voluntarily surrendered a certificate of qualification and who does not use the title "certified public accountant" nor does he allow anyone to refer to him as a "certified public accountant", and neither he nor anyone else refers to him in any representation as described in 21 NCAC 8A .0308(b). Unrevoked inactive certificates shall be kept by the Board until change of status of the former certificate holder;

(22) (14) "IRS" means the Internal Revenue Service;

(23) (15) "License year" means the 12 months beginning July 1 and ending June 30;

(24) (16) "Member of a firm" means any CPA who has an ownership interest in a CPA firm including owners, partners and shareholders;

(25) (17) "NASBA" means the National Association of State Boards of Accountancy;

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(26) (18) "NCACPA" means the North Carolina Association of Certified Public Accountants;

(27) (19) "North Carolina office" means any office physically located in North Carolina;

(28) (20) "Participating firm" means a firm participating in the SQR program. Does not include firms exempt by reason of 21 NCAC 8M .0102(a) or deemed in compliance pursuant to 21 NCAC 8M .0104;

(29) "Person" means any natural person, corporation, partnership, unincorporated association, or other entity;

(30) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;

(31) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;

(32) (21) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who does not receive any earned compensation for current personal services in any job whatsoever; however, this does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA. Limited exemptions may be granted in the discretion of the Board only in those instances when an applicant for "retired" status shows the personal services are unrelated to the field of accounting and the applicant verifies no intent to return to active status; and the following instances when the applicant verifies no intent to return to active status and either:

(A) the applicant performs no personal services related to the field of accounting, or

(B) the applicant is not providing accounting services, is 70 years of age or more, and agrees not to hold himself out as a CPA or use the title in connection with any type of service provided to the public.

(33) (22) "Revenue Department" means the North Carolina Department of Revenue.

(34) "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;

(35) (26) "SQR Advisory Committee" means the State Quality Review Advisory Committee to the Board; and

(36) (27) "SQR Program" means the State Quality Review Program of the North Carolina State Board of Certified Public Accountant Examiners;

(37) (23) "Review team" "SQR Review team" means that team of CPAs which reviews a firm pursuant to the requirements of Subchapter 8M. A review team may be comprised of one or more members;

(38) (24) "Review team captain" "SQR Review team captain" means that member of a review team who is responsible for the review and supervi

(39) (25) "Reviewer" "SQR Reviewer" means a member of a review team including the review team captain; and

(40) "Trade name" means a name used to designate a business enterprise.

Statutory Authority G.S. 93-1; 93-12(8c).

SUBCHAPTER 8G - PROFESSIONAL ETHICS AND CONDUCT

SECTION .0100 - GENERAL PROVISIONS

.0101 COMPLIANCE WITH BOARD RULES OF PROFESSIONAL ETHICS/CONDUCT

(a) The reliance of the public and the business community on sound financial reporting and advice on business affairs imposes on the accounting profession an obligation to maintain high standards of technical competence, morality and integrity. To this end, a CPA shall at all times maintain independence of thought and action, hold the affairs of his clients in strict confidence, strive continuously to improve his professional skills, observe generally accepted accounting principles and standards, promote sound and informative financial reporting, uphold the dignity and honor of the accounting profession, and maintain high standards of personal conduct.

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(b) Acceptance of licensure as a CPA implies that the licensee has assumed an obligation to be diligent in the performance of professional services; to be fair and honest in relations with clients, fellow practitioners and the public; to exhibit a proper appreciation of his duties to the community and state; and to comply with these Rules. Anyone authorized to use the title "CPA" in dealing with the public must inform the public that they are licensed by this Board.

(c) The Rules of Professional Ethics and Conduct presuppose that disciplinary assessment of a CPA's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question. Moreover, the rules presuppose that both the decision to take disciplinary action and the severity of such action depend on all of these facts and circumstances, including the willfulness and seriousness of the violation, any extenuating factors, and any previous violations. In interpreting the rules, one should keep in mind that they cover a broad range of behavior; consequently, they do not specifically enumerate every possible unethical act.

(d) The Rules of Professional Ethics and Conduct apply to all services performed in the practice of public accountancy, including tax and management advisory services, except:

- (1) where the wording of a rule indicates otherwise;
- (2) when a CPA is practicing outside the state of North Carolina and not rendering services for North Carolina clients, and consequently, is not subject to discipline for departing from any of the rules stated herein, as long as his conduct is in accord with the statutes and rules of the state, district or territory of the United States in which he is practicing; or
- (3) when a CPA is practicing outside the United States and, consequently, is not subject to discipline for departing from any of the rules stated herein, as long as his conduct is in accord with the rules of the organized accounting profession in the country in which he is practicing. However, when a CPA is associated with financial statements in such a manner as to imply that he is acting as an independent public accountant and under circumstances that would entitle the reader to assume that United States practices were followed, he must comply with the requirements of rules in Section 8G .0200.

(e) The violation of any of these rules by any person associated with a CPA in the practice of public accountancy who is either under the

CPA's supervision, or the CPA's partner or fellow shareholder, will be deemed to be a violation of the rule by the CPA unless the CPA exercised proper supervision, when required by these rules, and neither knew nor had reason to know of the violation.

(f) A CPA shall not permit others to carry out on his behalf, with or without compensation, acts which if carried out by the CPA would be a violation of these rules.

(g) In the interpretation and enforcement of these rules, the Board will give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions and by appropriately authorized ethics committees of professional organizations.

Statutory Authority G.S. 55B-12; 93-12(9).

.0102 DISCREDITABLE CONDUCT

(a) A CPA shall not engage in conduct discreditable to the accountancy profession. Discreditable conduct includes acts of professional misconduct and acts that are false, misleading, dishonest or deceptive.

(b) Professional misconduct includes but is not limited to:

- (1) attempting to violate the Rules of Professional Ethics and Conduct in this Subchapter;
- (2) knowingly assisting or inducing another to violate or attempt to violate the rules, or doing so through the acts of another;
- (3) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character or fitness as a CPA in other respects;
- (4) stating or implying an ability to improperly influence a governmental agency or official;
- (5) failing to fully cooperate with the Board in connection with any inquiry it shall make, including failing to claim mail from the U.S. Postal Service and responding completely and promptly to all inquiries by the Board or its representatives;
- (6) discriminating in employment practices based on race, color, religion, sex, national origin or handicap;
- (7) failing to comply with any disciplinary order issued by the Board;
- (8) failing to perform services in accordance with the conditions, terms or prerequisites of a public communication, quotation, engagement agreement, or contract;
- (9) regarding an invitation for competitive bids on attest services, it shall be discred-

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itable for a CPA or CPA firm to knowingly offer to perform said services below cost for the purposes of injuring or destroying competition; provided, it shall not be a violation to do so in order to meet competition. Nothing herein shall be construed to prohibit competitive bidding nor establishes a minimum price of any CPA services.

(c) False, misleading, dishonest or deceptive acts include, but are not limited to:

- (1) using deceptive representations in connection with services performed;
- (2) asserting that services are of a particular standard when they are not;
- (3) disparaging the accounting services or business of another by false, misleading or deceptive representations of fact;
- (4) misrepresenting facts or failing to disclose relevant facts;
- (5) creating false or unjustified expectations of favorable results;
- (6) implying abilities not supported by valid education, professional attainments or licensing recognition; or
- (7) providing false or misleading information on the qualifying experience of an applicant for a certificate of qualification.

Statutory Authority G.S. 55B-12; 93-12(9).

SECTION .0200 - RESPONSIBILITIES TO CLIENTS AND COLLEAGUES

.0205 CONTINGENT FEES

(a) Professional services shall not be offered or rendered under an arrangement whereby no fee will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the findings or results of such services. However, fees may vary depending, for example, on the complexity of the service rendered. The offering or rendering of professional services for, or the receipt of, a contingent fee by a CPA is not prohibited except for engaging to render or rendering by a CPA for a contingent fee:

- (1) of professional services for, or the receipt of such a fee from, any person for whom the CPA also performs attest services, during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services; and
- (2) for the preparation of original or amended tax returns or claims for tax refunds.

(b) Fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results

of judicial proceedings or the findings of governmental agencies.

Statutory Authority G.S. 55B-12; 93-12(9).

SECTION .0300 - OTHER RESPONSIBILITIES

.0302 COMMISSIONS AND REFERRAL FEES

A CPA shall not pay a commission to obtain a client, nor shall he accept a commission for a referral to a client, of products or services of others. This Rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

(a) The offering or rendering of professional services for, or the receipt of, a disclosed commission by a CPA is not prohibited. The engaging to render or rendering of professional services by a CPA for a commission for, or the receipt of a commission from, any person for whom the CPA also performs attest services is prohibited during the period of the attest services engagement and the period covered by any historical financial statements involved in such attest services.

(b) The payment or acceptance of a disclosed referral fee is not prohibited.

Statutory Authority G.S. 55B-12; 93-12(9).

SUBCHAPTER 8H - RECIPROCITY

.0001 RECIPROCAL CERTIFICATES

(a) Persons who meet the requirements of G.S. 93-12(6) may apply to the Board for a reciprocal certificate.

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by statute.

(c) An applicant for a reciprocal certificate must meet all of the current requirements imposed on an applicant under G.S. 93-12(5) or the following requirements, which the Board considers to be substantially equivalent to those requirements:

- (1) The applicant has the unrestricted privilege to use the CPA title and to practice public accountancy in any state or territory of the United States, or the District of Columbia.
- (2) The applicant:
 - (A) within ten years immediately preceding the filing date of the application, has had four years of experience in the field of accounting under the direct supervision of a CPA who held a valid license during the period of supervision in any state or terri-

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tory of the United States or the District of Columbia; or

- (B) has ten years of experience in the field of accounting, or ten years of experience teaching accounting as defined and calculated in 21 NCAC 8F .0409, or any combination of such experience earned within the 12 years immediately preceding the filing date of the application.
- (3) The applicant received a score of at least 75 on each part of the Uniform CPA Examination.
- (4) During the two years preceding the applicant's filing date for a reciprocal certificate, the applicant has completed 80 hours of CPE in courses meeting the requirements of 21 NCAC 8G .0401(a). However, applicants who received their initial CPA license within four years from the filing date of their application for a reciprocal certificate are exempt from this CPE requirement.

(d) An applicant for change in status or reinstatement of a reciprocal certificate that was inactive, forfeited, or retired more than 10 years before the date of reapplication, must comply with all current requirements for a reciprocal certificate.

Statutory Authority G.S. 93-12(6); 93-12(7a).

* * * * *

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art Examiners intends to amend rule(s) cited as 21 NCAC 14L .0105.

The proposed effective date of this action is August 3, 1992.

Instructions on how to demand a public hearing (must be requested in writing within 15 days of notice): To demand a public hearing, contact Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, Grove Towers, Fifth Floor, 1110 Navaho Dr., Raleigh, N.C. 27609.

Reason for Proposed Action: Licensed cosmetologists, who have been practicing manicuring full time for a period of five years, or who have completed the 320-hour teacher course, should also be allowed to take the manicurist teacher examination, because the study of

manicuring is included in their study of cosmetology.

Comment Procedures: Any interested person may request information, permission to be heard, or copies of the proposed regulations by writing or calling Vicky Goudie, Executive Secretary, N.C. State Board of Cosmetic Art Examiners, Grove Towers, Fifth Floor, 1110 Navaho Dr., Raleigh, N.C. 27609. Telephone: (919) 850-2793. Comment will be open for 30 days from the date of publication.

CHAPTER 14 - COSMETIC ART EXAMINERS

SUBCHAPTER 14L - COSMETIC ART TEACHERS

SECTION .0100 - TEACHER QUALIFICATIONS AND EXAMINATIONS

.0105 QUALIFICATIONS - MANICURIST TEACHERS

- (a) To be a manicurist teacher, an applicant must:
 - (1) have a high school diploma or a high school graduation equivalency certificate;
 - (2) be a registered manicurist or cosmetologist in this State;
 - (3) have either:
 - (A) practiced manicuring in a cosmetic art shop for a period equivalent to five years of full-time work; or
 - (B) completed a 320-hour teacher training course in manicuring as set forth in Rule 14L .0202(b) in an approved cosmetic art school and practiced manicuring in a cosmetic art shop for a period equivalent to six months of full-time work; and
 - (4) pass the manicurist teacher's examination.
- (b) The required six months' experience may be gained while a manicurist is enrolled in a teacher trainee course, but it must consist of experience in a cosmetic art shop.
- (c) Applicants who are registered manicurists in good standing in this State and who were regularly employed in a school in this State as a teacher of manicuring before January 1, 1991, may substitute the equivalent of three years of full-time teaching in lieu of the requirements of Paragraph (a)(3) of this Rule if they apply for a license as a manicurist teacher on or before January 1, 1993.

Statutory Authority G.S. 88-23.

This section contains rules filed for publication in the North Carolina Administrative Code where a notice was not required for publication in the Register. Also, the text of final rules will be published in this section upon request of any adopting agency.

TITLE 17 - DEPARTMENT OF REVENUE

CHAPTER 9 - MOTOR FUELS TAX DIVISION

SUBCHAPTER 9H - SPECIAL FUELS TAX

SECTION .0200 - CONSIGNMENT: SALES INVOICES: TAX FREE DELIVERIES: METERS: MILEAGES

.0208 REPORTING SALES AND DELIVERIES OF NON-HIGHWAY DIESEL

Suppliers are required to file a report and show a full accountability of special fuels. Non-highway sales of diesel to bulk users must be listed separately by customer on the report if the bulk users have a motor vehicle propelled by diesel. Otherwise, these sales are to be included in a summary total of non-highway diesel sales to customers not licensed with this Division.

*History Note: Statutory Authority G.S. 105-449.17; 105-449.19; 105-449.32;
Eff. May 1, 1992.*

.0209 BULK USERS: PURCHASES OF NON-HIGHWAY DIESEL

Bulk users are not required to keep inventories or report bulk purchases of non-highway diesel unless the bulk users have a motor vehicle propelled by diesel.

*History Note: Statutory Authority G.S. 105-449.17; 105-449.21; 105-449.32;
Eff. May 1, 1992.*

SECTION .0300 - LIQUIFIED PETROLEUM GAS

.0305 REPORTING SALES AND DELIVERIES: PROPANE GAS SUPPLIERS

Non-highway sales of propane gas to bulk users must be listed separately by customer on the report if the bulk users have a motor vehicle propelled by propane gas. Otherwise, these sales are to be included in a summary total of non-highway propane gas sales to customers not licensed with this Division.

*History Note: Statutory Authority G.S. 105-449.17; 105-449.19; 105-449.32;
Eff. May 1, 1992.*

.0306 BULK USERS: PURCHASES OF PROPANE GAS

Bulk users are not required to keep inventories or report bulk purchases of non-highway propane gas unless the bulk users have a motor vehicle propelled by propane gas.

*History Note: Statutory Authority G.S. 105-449.17; 105-449.21; 105-449.32;
Eff. May 1, 1992.*

LIST OF RULES CODIFIED

The List of Rules Codified is a listing of rules that were filed with OAH in the month indicated.

Key:

<i>Citation</i>	= Title, Chapter, Subchapter and Rule(s)
<i>AD</i>	= Adopt
<i>AM</i>	= Amend
<i>RP</i>	= Repeal
<i>With Chgs</i>	= Final text differs from proposed text
<i>Eff. Date</i>	= Date rule becomes effective
<i>Temp. Expires</i>	= Rule was filed as a temporary rule and expires on this date

NORTH CAROLINA ADMINISTRATIVE CODE

MARCH 1992

TITLE DEPARTMENT

I0	Human Resources
I1	Insurance
I3	Labor
15A	Environment, Health, and Natural Resources

TITLE DEPARTMENT

19A	Transportation
21	Occupational Licensing Boards
46 - Pharmacy	
25	State Personnel

Citation		AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10	NCAC 3R .2214			•		04 01 92	
3U	.0102		•		•	04 01 92	
	.0401		•			04 01 92	
	.0403		•		•	04 01 92	
	.2101		•			04 01 92	
	.2609		•			04 01 92	
14K	.0351		•			04 01 92	
	.0403		•		•	04 01 92	
14M	.0711		•			04 01 92	
18Q	.0520		•			04 01 92	
	.0542 - .0552	•				04 01 92	
26H	.0101 - .0102		•			04 01 92	
42C	.2401		•			04 01 92	
42E	.0905 - .0906		•		•	05 01 92	
	.1207		•		•	05 01 92	
42Z	.0604		•		•	05 01 92	
	.0901	•			•	05 01 92	

LIST OF RULES CODIFIED

Citation		AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
10 NCAC 45H .0206			•			04 01 92	
50B .0101			•			04 01 92	
51G .0101 - .0105		•				05 02 92	10 29 92
.0201 - .0202		•				05 02 92	10 29 92
.0301 - .0303		•				05 02 92	10 29 92
11 NCAC 10 .0105		•			•	04 01 92	
.0402 - .0403				•		04 01 92	
.0704 - .0707				•		04 01 92	
.0715 - .0716				•		04 01 92	
.1102			•		•	04 01 92	
.1107			•		•	04 01 92	
.1604			•			04 01 92	
11C .0131		•			•	05 01 92	
13 NCAC 7C .0101			•			05 26 92	
.0107		•			•	04 01 92	
15A NCAC 2E .0107			•		•	04 01 92	
.0301		•				04 01 92	
7J .0301			•			03 31 92	
.0301			•			04 01 92	
.0302			•			03 31 92	
.0302			•			04 01 92	
14B .0002			•			04 01 92	
.0005 - .0007			•			04 01 92	
.0009			•			04 01 92	
.0010				•		04 01 92	
18A .1004			•		•	04 01 92	
.1510			•			04 01 92	
.1802			•		•	04 01 92	
.1809			•			04 01 92	
.1812			•			04 01 92	
.2202			•		•	04 01 92	
.2624			•		•	04 01 92	
.2629 - .2630			•			04 01 92	
.3001 - .3003		•			•	07 01 92	
.3004 - .3005		•				07 01 92	
.3006		•			•	07 01 92	
.3007		•				07 01 92	

LIST OF RULES CODIFIED

Citation	AD	AM	RP	With Chgs	Eff. Date	Temp. Expires
15A NCAC 18A .3008 - .3009	•			•	07/01/92	
.3010 - .3011	•				07/01/92	
.3012	•			•	07/01/92	
.3013	•				07/01/92	
.3014	•			•	07/01/92	
.3015	•				07/01/92	
.3016	•			•	07/01/92	
.3101 - .3105 Transferred and Recodified from 15A NCAC 21E .0401 - .0405					02/18/92	
18C .1508		•		•	04/01/92	
.1510		•		•	04/01/92	
.1515 - .1518		•		•	04/01/92	
.1523		•		•	04/01/92	
.1527		•		•	04/01/92	
.1536	•			•	04/01/92	
.2101 - .2105	•				04/01/92	
19A .0202		•		•	04/01/92	
19B .0203		•			04/01/92	
.0302		•			04/01/92	
.0304		•			04/01/92	
.0305			•		04/01/92	
.0309		•			04/01/92	
.0311		•			04/01/92	
.0320 - .0321		•			04/01/92	
21E .0401 - .0405 Transferred and Recodified to 15A NCAC 18A .3101 - .3105					02/18/92	
.0501	•			•	04/01/92	
21F .0701		•		•	04/01/92	
24A .0202		•			04/01/92	
.0303		•			04/01/92	
19A NCAC 3D .0801		•			03/30/92	09/26/92
21 NCAC 46 .1403		•		•	04/01/92	
.1503		•		•	04/01/92	
25 NCAC 1D .0611		•			04/01/92	

RRC OBJECTIONS

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 143B-30.2(c). State agencies are required to respond to RRC as provided in G.S. 143B-30.2(d).

AGRICULTURE

Plant Industry

2 NCAC 48A .0239 - <i>Permit to Sell Bees</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
2 NCAC 48A .0240 - <i>Form BS-11</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
2 NCAC 48A .0611 - <i>Program Participation and Payment of Fees</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
2 NCAC 48E .0101 - <i>Definitions</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
2 NCAC 48E .0101 - <i>Definitions</i> <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
2 NCAC 48E .0101 - <i>Definitions</i> <i>Agency Withdraw Rule</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
		02/20/92

CRIME CONTROL AND PUBLIC SAFETY

State Highway Patrol

14A NCAC 9H .0304 - <i>Notifying Registered Owner</i> <i>No Response from Agency</i>	<i>RRC Objection</i>	12/19/91
	<i>No Action</i>	01/24/92
		02/20/92

ECONOMIC AND COMMUNITY DEVELOPMENT

Banking Commission

4 NCAC 3C .0807 - <i>Subsidiary Investment Approval</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
4 NCAC 3C .0901 - <i>Books and Records</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
4 NCAC 3C .0903 - <i>Retention: Reproduction/Disposition of Bank Records</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
4 NCAC 3D .0302 - <i>Administration of Fiduciary Powers</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
4 NCAC 3H .0102 - <i>Regional Bank Holding Company Acquisitions</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92

Community Assistance

4 NCAC 19L .0103 - <i>Definitions</i> <i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92
4 NCAC 19L .0403 - <i>Size and Use of Grants Made to Recipients</i>	<i>RRC Objection</i>	04/16/92
4 NCAC 19L .0407 - <i>General Application Requirements</i>	<i>RRC Objection</i>	04/16/92
4 NCAC 19L .1301 - <i>Definition</i> <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92

Credit Union Division

4 NCAC 6C .0407 - <i>Business Loans</i>	<i>RRC Objection</i>	01/24/92
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RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	02/20/92
Savings Institutions Division: Savings Institutions Commission		
4 NCAC 16F .0001 - Permitted Activities <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92
4 NCAC 16F .0008 - Finance Subsidiary Transactions With Parent <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92
4 NCAC 16F .0009 - Issuance of Securities by Finance Subsidiaries <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92
4 NCAC 16F .0011 - Holding Company Subsidiaries/Finance Subsidiaries <i>Agency Revised Rule</i>	<i>RRC Objection</i>	04/16/92
	<i>Obj. Removed</i>	04/16/92

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Coastal Management

15A NCAC 7H .0306 - General Use Standards for Ocean Hazard Areas <i>Agency Responded</i>	<i>RRC Objection</i>	01/24/92
	<i>No Action</i>	01/24/92
		01/24/92
	<i>Eff.</i>	03/01/92
15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing <i>Rule Returned to Agency</i>	<i>RRC Objection</i>	02/20/92
		03/19/92
	<i>Eff.</i>	03/31/92
15A NCAC 7J .0301 - Who is Entitled to a Contested Case Hearing <i>Rule Returned to Agency</i>	<i>RRC Objection</i>	03/19/92
		03/19/92
	<i>Eff.</i>	04/01/92
15A NCAC 7J .0302 - Petition For Contested Case Hearing <i>Rule Returned to Agency</i>	<i>RRC Objection</i>	02/20/92
		03/19/92
	<i>Eff.</i>	03/31/92
15A NCAC 7J .0302 - Petition For Contested Case Hearing <i>Rule Returned to Agency</i>	<i>RRC Objection</i>	03/19/92
		03/19/92
	<i>Eff.</i>	04/01/92
15A NCAC 7J .0402 - Criteria for Grant or Denial of Permit Applications	<i>RRC Objection</i>	10/17/91
15A NCAC 7M .0201 - Declaration of General Policy <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
	<i>No Action</i>	01/24/92
		01/24/92
	<i>Eff.</i>	03/01/92
15A NCAC 7M .0202 - Policy Statements <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
	<i>No Action</i>	01/24/92
		01/24/92
	<i>Eff.</i>	03/01/92
15A NCAC 7M .0303 - Policy Statements <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
	<i>No Action</i>	01/24/92
		01/24/92
	<i>Eff.</i>	03/01/92
15A NCAC 7M .0403 - Policy Statements <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
	<i>No Action</i>	01/24/92
	<i>Obj. Removed</i>	02/20/92
15A NCAC 7M .0901 - Declaration of General Policy <i>Agency Responded</i>	<i>RRC Objection</i>	10/17/91
	<i>No Action</i>	12/19/91
	<i>No Action</i>	01/24/92

RRC OBJECTIONS

<i>Rule Returned to Agency Agency Filed Rule with OAH</i>	<i>Eff.</i>	<i>01/24/92 03/01/92</i>
Environmental Management		
<i>15A NCAC 2E .0107 - Delegation Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>03/19/92 03/19/92</i>
Governor's Waste Management Board		
<i>15A NCAC 14B .0002 - Definitions Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>03/19/92 03/19/92</i>
Radiation Protection		
<i>15A NCAC 11 .0338 - Specific Terms and Conditions of Licenses Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
<i>15A NCAC 11 .0339 - Expiration of Licenses Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
Sedimentation Control		
<i>15A NCAC 4A .0005 - Definitions Agency Responded Agency Revised Rule</i>	<i>RRC Objection No Action Obj. Removed</i>	<i>12/19/91 01/24/92 02/20/92</i>
<i>15A NCAC 4C .0007 - Procedures: Notices Agency Responded</i>	<i>RRC Objection No Action Obj. Removed</i>	<i>12/19/91 01/24/92 02/20/92</i>
HUMAN RESOURCES		
Facility Services		
<i>10 NCAC 3J .2801 - Supervision Agency Revised Rule</i>	<i>RRC Objection RRC Objection</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3J .2905 - Personal Hygiene Items</i>	<i>RRC Objection</i>	<i>10/17/91</i>
<i>10 NCAC 3J .3401 - Applicability - Construction Agency Revised Rule</i>	<i>RRC Objection RRC Objection</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3L .0902 - License Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3L .0903 - Application for and Issuance of License Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3L .0904 - Inspections Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3L .0905 - Multiple Premises Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>04/16/92 04/16/92</i>
<i>10 NCAC 3L .1202 - Case Review and Plan of Care</i>	<i>RRC Objection</i>	<i>04/16/92</i>
<i>10 NCAC 3U .0102 - Definitions Agency Revised Rule</i>	<i>RRC Objection Obj. Removed</i>	<i>03/19/92 03/19/92</i>
Individual and Family Support		
<i>10 NCAC 42E .0905 - Personnel: Centers: Homes with Operator/Staff Agency Responded Agency Revised Rule</i>	<i>RRC Objection No Action Obj. Removed</i>	<i>01/24/92 02/20/92 03/19/92</i>
<i>10 NCAC 42E .0906 - Personnel: Day Care Homes: Staff Person/Op</i>	<i>RRC Objection</i>	<i>01/24/92</i>

RRC OBJECTIONS

<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
<i>10 NCAC 42E .1207 - Procedure</i>	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
<i>10 NCAC 42Z .0604 - Staff Requirements</i>	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92
<i>10 NCAC 42Z .0901 - Procedure</i>	<i>RRC Objection</i>	01/24/92
<i>Agency Responded</i>	<i>No Action</i>	02/20/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	03/19/92

Mental Health: General

<i>10 NCAC 14S .0102 - Communication Rights</i>	<i>ARRC Objection</i>	9/19/91
<i>Agency Responded</i>		10/17/91
<i>10 NCAC 14S .0103 - Living Environment</i>	<i>ARRC Objection</i>	9/19/91
<i>Agency Responded</i>		10/17/91

LABOR

Elevator and Amusement Device

<i>13 NCAC 15 .0402 - Responsibility for Compliance</i>	<i>RRC Objection</i>	04/16/92
<i>13 NCAC 15 .0429 - Go Karts</i>	<i>RRC Objection</i>	04/16/92
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	04/16/92

LICENSING BOARDS AND COMMISSIONS

Certified Public Accountant Examiners

<i>* 21 NCAC 8G .0313 - Firm Name</i>	<i>RRC Objection</i>	10/17/91
<i>Agency Responded</i>	<i>No Action</i>	12/19/91

RULES INVALIDATED BY JUDICIAL DECISION

This Section of the *Register* lists the recent decisions issued by the North Carolina Supreme Court, Court of Appeals, Superior Court (when available), and the Office of Administrative Hearings which invalidate a rule in the North Carolina Administrative Code.

25 NCAC 1B .0414 - SITUATIONS IN WHICH ATTORNEYS FEES MAY BE AWARDED

Robert Roosevelt Reilly Jr., Administrative Law Judge with the Office of Administrative Hearings, declared Rule 25 NCAC 1B .0414 void as applied in *William Paul Fearrington, Petitioner v. University of North Carolina at Chapel Hill, Respondent* (91 OSP 0905).

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

KEY TO CASE CODES

ABC	Alcoholic Beverage Control Commission	EDC	Department of Public Instruction
BDA	Board of Dental Examiners	EHR	Department of Environment, Health, and Natural Resources
BME	Board of Medical Examiners	ESC	Employment Security Commission
BMS	Board of Mortuary Science	HAF	Hearing Aid Dealers and Fitters Board
BOG	Board of Geologists	IIRC	Human Relations Commission
BON	Board of Nursing	IND	Independent Agencies
BOO	Board of Opticians	INS	Department of Insurance
CFA	Commission for Auctioneers	LBC	Licensing Board for Contractors
COM	Department of Economic and Community Development	MLK	Milk Commission
CPS	Department of Crime Control and Public Safety	NHA	Board of Nursing Home Administrators
CSE	Child Support Enforcement	OAH	Office of Administrative Hearings
DAG	Department of Agriculture	OSP	Department of State Personnel
DCC	Department of Community Colleges	PHC	Board of Plumbing and Heating Contractors
DCR	Department of Cultural Resources	POD	Board of Podiatry Examiners
DCS	Distribution Child Support	SOS	Department of Secretary of State
DHR	Department of Human Resources	SPA	Board of Examiners of Speech and Language Pathologists and Audiologists
DOA	Department of Administration		
DOJ	Department of Justice		
DOL	Department of Labor		
DSA	Department of State Auditor		
DST	Department of State Treasurer	WRC	Wildlife Resources Commission

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alyce W. Pringle v. Department of Education	88 OSP 0592 88 EEO 0992	Morgan	03/27/92
Susie Woodle v. Department of Commerce, State Ports Authority	88 OSP I411	Mann	03/25/92
Fernando Demeco White v. DHR, Caswell Center	89 OSP 0284	West	01/10/92
Cathy Faye Barrow v. DHR, Craven County Health Department	89 DHR 0715	Morgan	03/09/92
Kenneth W. White v. Employment Security Commission	90 OSP 0390	Becton	01/13/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Craig S. Eury v. Employment Security Commission	90 OSP 0391	Becton	01/13/92
Jolene H. Johnson v. DHR, Division of Medical Assistance	90 DHR 0685	Morgan	02/21/92
Joseph F. Nunes v. DHR, Division of Social Services, CSE	90 CSE 1036	Morgan	04/15/92
Sgt. Carl Edmunds v. DHR, Division of Social Services, CSE	90 CSE 1135	Nesnow	02/04/92
Rafael Figueroa v. DHR, Division of Social Services, CSE	90 CSE 1138	Morgan	03/30/92
Sammie L. Frazier v. DHR, Division of Social Services, CSE	90 CSE 1167	Morgan	03/24/92
Richard A. Boyett v. DHR, Division of Social Services, CSE	90 CSE 1184	Morgan	03/30/92
Lance McQueen v. DHR, Division of Social Services, CSE	90 CSE 1204	Morgan	03/30/92
Kermit Linney v. Department of Correction	90 OSP 1380	Morrison	02/12/92
Larry D. Oates v. Department of Correction	90 OSP 1385	Becton	04/06/92
Fernando Guarachi v. DHR, Division of Social Services, CSE	90 CSE 1393	Morgan	04/07/92
Jerry Odell Johnson v. Sheriffs' Education & Training Standards Comm	90 DOJ 1411	Morgan	01/09/92
Stoney W. & Darlene L. Thompson v. Department of Environment, Health, & Natural Resources	91 EHR 0003	West	01/06/92
Gloria Jones/Medbill v. Children Special Health Services	91 EHR 0142	Morgan	03/11/92
Shonn S. Peek v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0147	Gray	04/16/92
Willie C. Rorie v. DHR, Division of Social Services, CSE	91 CSE 0166	Morgan	04/13/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Thomas Such v. EHR and William W. Cobey Jr.	91 OSP 0202	Becton	02/20/92
N.C. Human Relations Comm. on behalf of Deborah Allen v. Charles Watkins	91 HRC 0204	Morrison	03/17/92
Cindy Gale Hyatt v. Department of Human Resources	91 DHR 0215	Morgan	02/27/92
Gliston L. Morrisey v. Bd of Trustees/Teachers' & St Emp Retirement Sys	91 DST 0232	West	02/03/92
Anthony Caldwell v. Juvenile Evaluation Center	91 OSP 0259	Morgan	03/12/92
Kenneth R. Downs, Guardian of Mattie M. Greene v. Teachers' & St Emp Comp Major Medical Plan	91 DST 0261	Gray	02/20/92
Deborah W. Clark v. DHR, Dorothea Dix Hospital	91 OSP 0297	Nesnow	01/16/92
Wade R. Bolton v. DHR, Division of Social Services, CSE	91 CSE 0312	Mann	01/14/92
Betty L. Rader v. Teachers' & St Emp Major Medical Plan	91 DST 0330	Morgan	01/10/92
Marcia Carpenter v. UNC - Charlotte	91 OSP 0346	Mann	03/12/92
James Arthur Lee v. NC Crime Victims Compensation Commission	91 CPS 0355	Chess	03/05/92
Fred A. Wilkie v. Wildlife Resources Commission	91 OSP 0398	Chess	04/20/92
Michael Darwin White v. Department of Environment, Health, & Natural Resources	91 OSP 0413	Morrison	02/14/92
Curtis Wendell Bigelow v. CCPS, Division of State Highway Patrol	91 OSP 0418	West	03/10/92
Alcoholic Beverage Control Commission v. Hilsinger Enterprises, Inc., t/a The Waterin Hole	91 ABC 0442	Gray	01/10/92

CONTESTED CASE DECISIONS

CASE NAME	CASE NUMBER	ALJ	FILED DATE
Penny Whitfield v. Pitt County Mental Health Center	91 OSP 0465	Gray	01/08/92
Senior Citizens' Home Inc. v. DHR, Division of Facility Services, Licensure Section	91 DHR 0467	Gray	02/18/92
Alcoholic Beverage Control Commission v. Everett Lee Williams Jr., t/a Poor Boys Gameroom	91 ABC 0531	Morrison	01/31/92
Jonathan Russell McCravey, t/a Encore v. Alcoholic Beverage Control Commission	91 ABC 0534	Morrison	02/04/92
Dorothy "Cris" Crissman v. Department of Public Instruction	91 OSP 0581	Morrison	04/03/92
Horace Britton Askew Jr. v. Sheriffs' Education & Training Standards Comm	91 DOJ 0610	Reilly	01/22/92
Roy L. Keever v. Department of Correction	91 OSP 0615	West	02/26/92
Ten Broeck Hospital (Patient #110587, Medicaid #124-24-4801-C) Ten Broeck Hospital (Patient #110538, Medicaid #240334254S) Ten Broeck Hospital (Patient #110788, Medicaid #900-12-6762-T) v. DHR, Division of Medical Assistance	91 DHR 0618 91 DHR 0429 91 DHR 1265	Morrison	04/08/92
Larry Madison Chatman, t/a Larry's Convenient Store v. Alcoholic Beverage Control Commission	91 ABC 0626	Gray	02/20/92
Cecil Leon Neal v. Department of Economic & Community Development	91 OSP 0648	Mann	02/07/92
DAG, Food & Drug Protection Div, Pesticide Section v. D. Carroll Vann	91 DAG 0654	Morrison	01/15/92
Kidd's Day Care and Preschool v. Child Day Care Section	91 DHR 0666 91 DHR 0666	Becton	03/25/92 04/10/92
Mary Tisdale v. Hyde County Health Department and EHR	91 EHR 0679	Morgan	03/23/92
Alcoholic Beverage Control Commission v. Kenneth Richard Cooper, t/a Silvers	91 ABC 0680	Becton	02/26/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Sarah Linda Hankins v. Alcoholic Beverage Control Commission	91 ABC 0688	Mann	02/27/92
Keith Hull v. DHR - Division of Medical Assistance	91 DHR 0707	Chess	02/27/92
John E. Canup v. DHR, Division of Social Services, CSE	91 CSE 0759	Reilly	01/13/92
Faleon Associates, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 0767 91 EHR 0768	West	01/06/92
Michael F. Stone v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 0771	West	02/24/92
Ruben Gene McLean v. Alcoholic Beverage Control Commission	91 ABC 0772	Nesnow	01/30/92
Bobby McEachern v. Fayetteville State University	91 OSP 0839	Gray	02/06/92
Singletree, Inn v. EHR, and Stokes County Health Department	91 EHR 0840	Nesnow	01/16/92
Henry B. Barnhardt v. Mt Pleasant Vol Fire Dept, St Auditor/Firemen's Rescue Squad Workers' Pension Fund	91 DSA 0843	Reilly	01/29/92
Mackey L. Hall v. DHR, Division of Social Services, CSE	91 CSE 0854	Reilly	01/17/92
Gloria J. Woodard v. Division of Motor Vehicles	91 OSP 0855 91 OSP 0855	Mann	04/09/92 04/13/92
Kay Long v. Department of Human Resources	91 DHR 0873	Reilly	03/17/92
Alcoholic Beverage Control Commission v. Mack Ray Chapman, t/a Ponderosa Lounge	91 ABC 0887	Morrison	01/31/92
Joseph W. Devlin Jr., Johnson Brothers Carolina Dist v. Alcoholic Beverage Control Commission	91 ABC 0890	West	02/11/92
Ossie Beard v. EHR & Wastewater Treatment Plant Certification Comm.	91 EHR 0893	Nesnow	03/12/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Alcoholic Beverage Control Commission v. Trinity C. C., Inc., t/a Trinity College Cafe	91 ABC 0915	West	02 11 92
N.C. Alcoholic Beverage Control Commission v. Jessie Pendergraft Rigsbee, T/A Club 2000	91 ABC 0919	West	03 12 92
Alcoholic Beverage Control Commission v. Cedric Warren Edwards, t/a Great American Food Store	91 ABC 0923	Becton	02 26 92
Department of Environment, Health, & Natural Resources v. Hull's Sandwich Shop, Andy Hull	91 EHR 0936	West	01 09 92
Betty Davis d b a ABC Academy v. DHHR, Division of Facility Services, Child Day Care Section	91 DHR 0955	Morrison	01 31 92
Thomas J. Hailey v. EHIR and Rockingham County Health Department	91 EHR 0957	Becton	01 15 92
Ronald Waverly Jackson v. EHR, Division of Maternal & Child Health, WIC Section	91 EHR 0963	Gray	02 24 92
Century Care of Laurinburg, Inc. v. DHHR, Division of Facility Services, Licensure Section	91 DHR 0981	Gray	03 24 92
David J. Anderson v. DHR, Division of Social Services, CSE	91 CSE 0989	Morgan	04 20 92
Herbert R. Clayton v. DHHR, Division of Social Services, CSE	91 CSE 1000	Mann	04 02 92
Roy Shealey v. Victims Compensation Commission	91 CPS 1002	Morrison	01 31 92
Joe L. Williams Jr. v. DHR, Division of Social Services, CSE	91 CSE 1014	Morrison	04 30 92
Willie Brad Baldwin v. DHR, Division of Social Services, CSE	91 CSE 1020	Reilly	01 28 92
Clinton Dawson v. N.C. Department of Transportation	91 OSP 1021	Mann	03 05 92
Benjamin C. Dawson v. Department of Correction	91 OSP 1025	West	02 18 92
Paulette R. Smith v. DHHR, Division of Social Services, CSE	91 CSE 1026	Reilly	02 27 92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Scot Dawson v. Department of Labor	91 DOL 1031	West	02/24/92
Luis A. Rosario v. DHR, Division of Social Services, CSE	91 CSE 1046	Morrison	03/03/92
Elijah Jefferson Jr. v. DHR, Division of Social Services, CSE	91 CSE 1055	Gray	04/20/92
Randy Quinton King v. CCPS, State Highway Patrol	91 OSP 1064	Gray	03/24/92
James D. Robinson v. DHR, Division of Social Services, CSE	91 CSE 1068	Gray	04/29/92
William H. Hogsed v. DHR, Division of Social Services, CSE	91 CSE 1070	Nesnow	03/16/92
David L. Brown v. DHR, Division of Social Services, CSE	91 CSE 1074	Morrison	03/31/92
Donald M. Washington v. DHR, Division of Social Services, CSE	91 CSE 1078	Morrison	03/04/92
William F. Driscoll v. DHR, Division of Social Services, CSE	91 CSE 1080	Mann	04/28/92
Melvin L. Miller Sr. v. DHR, Division of Social Services, CSE	91 CSE 1084	Morrison	03/16/92
Bobby G. Evans v. DHR, Division of Social Services, CSE	91 CSE 1094	Reilly	01/13/92
William Louis Timmons v. DHR, Division of Social Services, CSE	91 CSE 1104	Mann	02/18/92
Edmund D. Lester v. DHR, Division of Social Services, CSE	91 CSE 1113	Mann	04/21/92
Raymond Junior Cagle v. DHR, Division of Social Services, CSE	91 CSE 1123	Mann	03/30/92
Richard E. Murray v. Department of Human Resources	91 CSE 1134	Reilly	01/13/92
Pathia Miller v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1135	Mann	03/31/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Atlantic Enterprises, Inc. v. Department of Environment, Health, & Natural Resources	91 EHR 1136	Reilly	01/23/92
Theresa M. Sparrow v. Criminal Justice Education & Training Standards Comm	91 DOJ 1138	Mann	02/04/92
Darrel D. Shields v. DHR, Division of Social Services, CSE	91 CSE 1141	Morgan	03/30/92
James A. Hinson v. DHR, Division of Social Services, CSE	91 CSE 1154	Mann	02/18/92
George H. Parks Jr. v. DHR, Division of Social Services, CSE	91 CSE 1157	Morrison	01/27/92
Adrian Chandler Harley v. DHR, Division of Social Services, CSE	91 CSE 1180	Nesnow	02/10/92
Billy J. Hall v. DHR, Division of Social Services, CSE	91 CSE 1182	Nesnow	02/10/92
Donaldson L. Wooten v. DHR, Division of Social Services, CSE	91 CSE 1189	Reilly	03/13/92
William P. Reid v. DHR, Division of Social Services, CSE	91 CSE 1193	Nesnow	02/04/92
Jeddie R. Bowman v. DHR, Division of Social Services, CSE	91 CSE 1195	Morrison	04/30/92
Ronald G. Bolden v. DHR, Division of Social Services, CSE	91 CSE 1208	Gray	02/26/92
Wayne Phillip Irby v. DHR, Division of Social Services, CSE	91 CSE 1211	Nesnow	02/04/92
Tony Hollingsworth v. DHR, Division of Social Services, CSE	91 CSE 1212	Nesnow	02/10/92
Russell G. Ginn v. Department of Correction	91 OSP 1224	Reilly	02/14/92
Angela McDonald McDougald v. DHR, Division of Social Services, CSE	91 CSE 1227	Nesnow	02/28/92
Sening O. Mbye v. DHR, Division of Social Services, CSE	91 CSE 1228	Mann	03/11/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Arthur Thomas McDonald Jr. v. DHR, Division of Social Services, CSE	91 CSE 1252	Morrison	03/31/92
Stanford Earl Kern v. DHR, Division of Social Services, CSE	91 CSE 1255	Nesnow	02/04/92
Gene Weaver v. DHR, Division of Social Services, CSE	91 CSE 1264	Reilly	03/25/92
James T. White v. DHR, Division of Social Services, CSE	91 CSE 1271	Gray	02/27/92
Ronald Brown and Regina Brown v. DHR, Division of Facility Services	91 DHR 1278	Becton	02/25/92
Samuel Armwood v. David Brantley, Wayne County Clerk of Superior Court	91 CSE 1285	Reilly	02/11/92
Peter Gray Coley v. DHR, Division of Social Services, CSE	91 CSE 1297	Reilly	04/21/92
Enos M. Cook v. DHR, Division of Social Services, CSE	91 CSE 1303	Morrison	04/13/92
Raymond Vaughan v. DHR, Division of Social Services, CSE	91 CSE 1304	Reilly	03/09/92
Stanley Wayne Gibbs v. Elizabeth City State University	91 OSP 1318	Gray	01/14/92
David Martin Strode v. DHR, Division of Social Services, CSE	91 CSE 1327	Morgan	03/19/92
Anthony T. McNeill v. DHR, Division of Social Services, CSE	91 CSE 1336	Becton	04/20/92
D. C. Bass v. Department of Crime Control and Public Safety	91 OSP 1341	Chess	04/07/92
Steveason M. Bailey v. McDowell Technical Community College	91 OSP 1353	Morrison	01/28/92
Gary N. Rhoda v. Department of Correction	91 OSP 1361	Nesnow	01/31/92
William A. Sellers v. DHR, Division of Social Services, CSE	91 CSE 1395	Gray	04/01/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Marc D. Walker v. CCPS, Division of State Highway Patrol	91 OSP 1399	Morrison	03/16/92
Serena Gaynor v. DHR, Division of Vocational Rehabilitation	91 OSP 1403	Gray	03/02/92
Betty Davis, D/B/A ABC Academy v. DHR, Division of Facility Services, Child Day Care Section	91 DHR 1408	Chess	03/30/92
Bill Jones Jr. and Jessie F. Jones v. Department of Human Resources	91 DHR 1411	Nesnow	05/01/92
Charles R. Wellons II v. Department of Environment, Health, & Natural Resources	91 EHR 1418	West	02/25/92
Charley Joe Milligan v. Bd of Trustees/Local Gov't Emp Retirement Sys	91 DST 1424	Gray	02/27/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	91 OSP 1429 91 OSP 1430	Gray	03/13/92
James R. Fath v. Crime Victims Compensation Commission	91 CPS 1451	Morrison	04/15/92
Ollie Robertson v. Crime Victims Compensation Commission	92 CPS 0002	Morrison	04/15/92
New Bern-Craven County Board of Education, a Statutory Corporation of North Carolina v. The Honorable Harlan E. Boyles, State Treasurer, The Honorable Fred W. Talton, State Controller, The Honorable William W. Cobey, Jr., Sec. of EHR, Dr. George T. Everett, Dir., Div. of Environmental Mgmt.	92 EHR 0003	Reilly	03/13/92
Ellen Allgood, The Red Bear Lounge, Inc., 4022 North Main St., High Point, NC 27265 v. Alcoholic Beverage Control Commission	92 ABC 0007	Chess	04/07/92
Private Protective Services Board v. Robert R. Missildine, Jr.	92 DOJ 0025	Becton	03/23/92
Cindy G. Bartlett v. Department of Correction	92 OSP 0029	Reilly	03/16/92
Mr. Kenneth L. Smith, Pitt County Mart, Inc. v. DHR, Division of Maternal & Child Health, WIC Section	92 EHR 0085	Becton	04/15/92

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CASE NAME	CASE NUMBER	ALJ	FILED DATE
Kurt Hafner v. N.C. Retirement System et al.	92 DST 0094	Gray	03/04/92
Margaret Coggins v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0095	Becton	04/28/92
Roy Blalock, Deborah Eakins, John Gordon Wright v. UNC - Chapel Hill	92 OSP 0096	Gray	03/13/92
Paula Dail v. EHR, Division of Maternal & Child Health, WIC Section	92 EHR 0098	Becton	04/28/92
Youth Focus, Inc. (MID # 239-23-0865T) v. DHR, Division of Medical Assistance	92 DHR 0110	Gray	02/26/92
Charles W. Parker v. Department of Agriculture	92 OSP 0177	Reilly	04/27/92
Brunswick County v. Department of Environment, Health, & Natural Resources	92 EHR 0195	Morrison	04/21/92
Leon Scott Wilkinson v. Criminal Justice Education & Training Standards Comm	92 DOJ 0280	West	04/24/92
Thomas L. Rogers v. DHR, Division of Youth Services	92 OSP 0287	Gray	04/30/92
Paul M. Fratazzi, LPN v. Polk Youth Institute	92 OSP 0325	Nesnow	05/01/92
Fred Henry Hampton v. Criminal Justice Education & Training Stds Comm	92 DOJ 0393	West	04/23/92

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF WATAUGA

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 OSP 0398**

FRED A. WILKIE,
Petitioner

v.

N.C. WILDLIFE RESOURCES COMMISSION,
Respondent

RECOMMENDED DECISION

The petitioner filed a petition for a contested case hearing on May 6, 1991, alleging that the Respondent acted erroneously, failed to use proper procedure, acted arbitrarily or capriciously, or failed to act as required by law. The Respondent asserted in its Prehearing Statement filed on August 9, 1991, that it properly discharged Petitioner on April 30, 1990, for unacceptable personal conduct. The specific instances of alleged misconduct for which he was dismissed included: (1) falsifying the hours documented on his weekly activity reports (2) giving false information on his location to his superior officer, and (3) failure to follow other directions issued by his supervisor as established by the Division of Enforcement, written policy. The Respondent filed on June 5, 1991, Respondents Motion to Dismiss or in the Alternative for Summary Judgment. This motion was heard before Fred G. Morrison, Jr., Administrative Law Judge, on September 13, 1991 and His Honor entered an Order denying the Motion. The undersigned Administrative Law Judge issued a Notice of Hearing to all parties as provided by the applicable statutes, rules and codes, and the matter was heard in Watauga County, beginning on December 2, 1991.

APPEARANCES: Robert T. Speed, Attorney for Petitioner
Melissa L. Trippé, Assistant Attorney General, Department of Justice,
Attorney for Respondent

ISSUES

- (A) Whether just cause existed to dismiss Petitioner for unacceptable personnel conduct.
- (B) Whether Respondent followed proper procedure in dismissing Petitioner.

STATUTES, RULES AND LEGAL PRECEDENTS

(A) Statutes: G.S. 126-1, et. seq.
G.S. 150B-23, et. seq.

(B) Rules: 25 NCAC 1B .0100, et. seq.
26 NCAC 3 .0001, et. seq.

(C) Policies: North Carolina Office of State Personnel, Personnel Manual
North Carolina Wildlife Resources Commission,
Policy and Procedure Manual

(D) Precedents: Those decided under the statutes, rules, and policies set forth above.

FINDINGS OF FACTS

1. At the time of his dismissal, Petitioner was employed as a Wildlife Enforcement Officer at Pay Grade 69 and had been employed by Respondent for 16 years and 2 months.

CONTESTED CASE DECISIONS

2. The Petitioner was discharged on April 30, 1990 for alleged unacceptable personal conduct. The specific instances of alleged misconduct for which he had been dismissed included: falsifying the hours documented on his weekly activity reports and giving false information on his location to his Supervisor. The Petitioner was given Respondent's written documentation of these instances during a predismissal conference held on April 16, 1990.
3. Wildlife Officers worked irregular hours due to the fact that many of the violations of the laws they enforce take place at night.
4. The evidence indicates Petitioner performed his duties as a Wildlife Enforcement Officer with diligence and enthusiasm but was not as good at doing his paperwork as he was at enforcement duties.
5. Officers often wrote and signed reports that were not absolutely correct, in every detail, and these practices were known by supervisors, and sometimes directed by them because only a certain number of hours could be reported within a twenty-eight day period.
6. On April 16, 1990, the Respondent, through Captain Mike Lambert, conducted a predismissal conference with Petitioner, and presented him with a written summary of the charges or contentions, entitled "Predismissal Conference," which were stated as the reasons for dismissal in the memo Letter of Dismissal, from Colonel W. H. Ragland to the Petitioner dated April 30, 1990.
7. The "letter of dismissal" indicates that the Petitioner was being terminated "for reasons of unacceptable personal conduct" with reference to the "predismissal document dated April 16, 1990." The "specific" reasons for the dismissal were listed in this letter as follows:
 - a. "you have filed false written reports claiming hours worked and areas patrolled when in fact you were not working."
 - b. "you gave false information on the NCWRC radio to your supervisor as to location, when in fact you were at your residence."
 - c. "you have failed to follow other directives issued by your supervisor established by Division of Enforcement Written Policy."
8. A letter written by Captain Mike Lambert, sets forth the filing of false weekly activity reports regarding hours worked, departure and return times, locations and being untruthful as to location when asked by a superior officer, and that he, the Petitioner, consistently failed to use proper radio procedure after being instructed to do so by a superior officer.
9. The supporting evidence upon which the Respondent relies was obtained or compiled during surveillance of the Petitioner by other officers of the Enforcement Division of the Wildlife Resources Commission at the direction of Captain Lambert, on March 14, 1990; March 18, 1990; March 26, 1990; March 30, 1990; and March 31, 1990, between 7:30 AM and 7:00 PM.
10. The peak time of wildlife violations mostly occur in early morning, late afternoon, and at night.
11. This "surveillance" consisted primarily of observations of the road which leads from Highway 421 for approximately one (1) mile to the residence of the Petitioner (State Road #1612). These observations by other officers were from a location near the intersection of the "road" with Highway 421, and of the departures from and arrivals to this road. During this surveillance, radio traffic was monitored at all times and all of this information was compiled as the "supporting information which was provided at the April 6, 1990 dismissal conference."
12. This surveillance was heavily relied upon as the basis for the dismissal, and as a comparison between information contained in the Petitioner's weekly activity reports and his actions as observed or monitored by radio.

CONTESTED CASE DECISIONS

13. At the time of the "surveillance" the Petitioner held the rank of Sergeant and was responsible for the immediate supervision of three enforcement officers in Patrol Area 5 of District 7, which included reviewing paperwork, coordinating work details, administering performance appraisal, counseling, administering disciplinary actions, and reporting to his supervisors any problems associated with wildlife law enforcement in that work area.
14. In addition to his duties as a supervisor, the Petitioner was assigned in Watauga County where there were no other Wildlife officers stationed or living in this county. As a result, it was also necessary that he accept additional duties of an enforcement officer. Of all the counties in the District, Watauga was the only one without an enforcement officer.
15. Respondent's witnesses did not actually observe Petitioner at or in his residence during the specific periods of surveillance.
16. Captain Mike Lambert made the decision to consider the filing of what he considered a false report as "personal conduct" rather than "job performance related."
17. Captain Lambert says he feels that "anytime you're dealing with truthfulness, it's a person's conduct, it's not performance".
18. In spite of his stated interpretation, W. A. Hicks, a Wildlife Officer stationed in Iredell County received a written warning from Captain Mike Lambert dated December 18, 1989, after it was discovered that he had deliberately filed reports that reduced his arrests and citations on approximately 130 of his weekly reports, and these actions were classified by Captain Lambert as "job performance related" and a warning was issued for his conduct. This action of Captain Lambert giving the warning was issued three months before the beginning of the surveillance of the Petitioner.
19. Captain Lambert acknowledged in his testimony that Officer Hicks had filed many falsified reports but did not recall if he had put these actions in the category of "personal conduct" or "job performance related", but he was under the impression that he had given Officer Hicks a written warning for the "conduct." However, the record showed that he had only written a warning letter for job performance.
20. Despite the number and regularity of Officer Hicks' actions, Captain Lambert had considered them to be only inaccuracies, although the evidence was overwhelming that the action was deliberate. After learning that these "inaccuracies" were deliberate falsifications, no further disciplinary action was taken and nothing in the records was changed to reflect a change in the category of the falsifications from "job performance related" to "personal conduct."
21. Captain Lambert never discussed any inaccuracies or discrepancies with the Petitioner at any time prior to either the surveillance or predissmissal conference, and the Petitioner was never warned of any penalty or consequences for his failure to strictly adhere to the policy on truthfulness.
22. Despite the policy concerning truthfulness, other officers in the District indicated that the demands of the job required a form of falsification. Officers are told by supervisors that they will work as required and answer all calls, but they cannot show or report more than 171 hours per 28 day period. If an officer works more than 171 hours it is reported as personal time or not reported at all.
23. Former supervisors of the Petitioner agreed that the Petitioner gave more attention to catching people violating the law than he gave to paperwork. Comments in performance evaluations indicate Petitioner did not pay a lot of attention to paperwork, but he was never warned that he would be dismissed for not accurately doing the reports.
24. Petitioner was described as being hardworking, always available to assist officers needing help, and that he worked as hard or harder than most men in the district. The number of arrests made by the Petitioner was in the upper 25% of the district, his total number of cases was higher than anyone in the district, and officers that he supervised were performing their duties satisfactorily.

CONTESTED CASE DECISIONS

25. Performance evaluations indicate that the Petitioner exceeded expectations and there were no problems that were noted to need immediate attention.
26. The Petitioner has never worked less than 160 hours a pay period without taking vacation time in that period. He acknowledged that his weekly reports may not reflect the exact hours worked, but his is due to the fact that his interest was in enforcing the law and he never regarded paperwork as a matter of high priority, but he always put in the required hours during a pay period.
27. The Petitioner normally did his reports on Sunday night or Monday morning and did not keep daily notes of his activities. He frequently guessed at his hours when making out a weekly report, and the inaccuracies frequently included omissions of hours worked at night, as well as the exact or particular hours that he did work. He denies that he has ever intentionally indicated a total number of hours that was more than he had actually worked during a 28 day period.
28. The charge of giving false information to a Superior officer was apparently based upon Captain Lambert's interpretation of radio communications on Sunday, March 18, 1990, between Lt. Hendricks and the Petitioner. The subject of the call was an injured deer in Wilkes County.
29. When Lt. Hendricks asked the Petitioner his 10-20, (location), the Petitioner told him he was "just north of Deep Gap." Lt. Hendricks answered or handled the call.
30. Wildlife Officers commonly refrain from indicating their residence as their location and give the town instead. This is due to the use of scanners by hunters and lack of effectiveness if the exact location of the officer is known.
31. Captain Lambert has been observed by Lt. Hendricks and the Petitioner using this practice by stating his location as Elkin when he was in fact at his residence which was three or four miles from Elkin.
32. Lt. Hendricks was the petitioner's supervisor at the time of this communication. His decision to handle the call was not based upon the location given by the Petitioner. He was only interested in knowing if the Petitioner was in Wilkes County, and if the Petitioner had told him he was at his residence he "still would have handled the call."
33. Lt. Hendricks has often witnessed officers giving locations other than their home when asked their location over the radio.
34. Although the Respondent has established a policy requiring officers to use the ten signals whenever using their radios, it appears that officers in District 7 and other areas have deviated from this policy regularly and without consequence.
35. The use of portable (Saber) radios made it unnecessary to use the 10-7 and 10-8 codes as often since they made it possible to monitor radio traffic even when out of the officers vehicle.
36. The testimony of officers Patrick Hendricks, Hicks, Lewis, Thomas and Petitioner indicated that "dead spots" exist where an officer cannot send or receive radio signals in several areas within District 7, and much of Watauga County is affected by this problem. Dead Spots in Watauga County include from Boone West to the Tennessee line and from the Watauga River to Avery County.
37. Captain Lambert had been assigned to District 7 since October 1, 1989, and the Captain of this District before that time had instructed officers not to use the 10-7 and 10-8 codes as frequently because officers should not let the public know where they are.
38. Subsequent to the surveillance and the compiling of information by Captain Lambert and Lt. eQuire, Lt. Hendricks was called to the Raleigh Office on April 6, 1990 for the purpose of his own redDismissal conference. He had been there for about an hour and a half when Captain Lambert gave him the information concerning Petitioner. Prior to that time, Lt. Hendricks had no knowledge of the surveillance or disciplinary action, even though he was the Petitioner's immediate supervisor.

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39. Lt. Hendricks felt pressured to recommend dismissal of Petitioner because he had been told what a "sorry" supervisor he was and he was there for his own predismissal conference, and he had been told that Captain Lambert and Colonel Ragland would recommend a dismissal of Petitioner. Therefore, he felt pressured to make a like recommendation.

40. Prior to this predismissal hearing in Raleigh, North Carolina, Lt. Hendricks had been told on numerous occasions by Captain Lambert that he "was in a lot of trouble" and "it looked like he was going to lose his job."

41. At the time of the predismissal conference on April 16, 1990, the Petitioner had not been informed of the reason that he was instructed to report to the Highway Patrol Station in Elkin on that date; and he had no knowledge of any charges against him.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. Fred A. Wilkie, Petitioner was a permanent State employee at the time of his dismissal. Because he has alleged that Respondent lacked just cause for his dismissal, the Office of Administrative Hearings has jurisdiction to hear his appeal and issue a recommendation to the State Personnel Commission which shall make the final decision in the matter. G.S. 126-35, 126-37, 126-39, 150B-23 and 150B-36.
2. General Statute 126-35 provides, in part, "that no permanent employee subject to the State Personnel Act shall be dismissed except for just cause." Where just cause is an issue, the Respondent bears the ultimate burden of persuasion. A just cause issue carries both substantive and procedural questions. Causes for dismissal fall into two categories: (1) causes relating to performance of duties, and (2) causes relating to personal conduct detrimental to state service -- no prior warnings are required under (2).
3. In Jones v. Department of Human Resources, 300 NC 690, 691, (1980), the Supreme Court of North Carolina held that "prior dismissal for causes relating to performance of duties, a permanent State employee is entitled to three separate warnings that his performance is unsatisfactory. He must receive: (1) An oral warning explaining how he is not meeting the job's requirements; (2) a second oral warning outlining his unsatisfactory performance with a follow-up letter reviewing the points covered by the oral warning; (3) a third and final written warning setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action."
4. Respondent has not met its burden of showing just cause for terminating Petitioner's employment. Petitioner did not receive the required number of warnings prior to being dismissed for what amounted, if anything, to inadequate job performance. Respondent never warned Petitioner about any of the alleged unsatisfactory job performance.

RECOMMENDED DECISION

The Petitioner's dismissal be reversed and that he be reinstated and awarded back pay as well as attorney's fees.

ORDER

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the State Personnel Commission.

CONTESTED CASE DECISIONS

This the 20th day of April, 1992.

Sammie Chess, Jr.
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
91 DHIR 1411

BILL JONES JR. AND JESSIE F. JONES,)
Petitioner)
v.)
N.C. DEPARTMENT OF HUMAN RESOURCES,)
Respondent)

RECOMMENDED DECISION

The above-captioned matter was heard before Dolores O. Nesnow, duly-appointed Administrative Law Judge, on April 9, 1992, in Durham, North Carolina.

APPEARANCES

Petitioner: Bill and Jessie Jones
2408 N. Oakridge Boulevard
Durham, North Carolina 27707
Petitioners

Respondent: Diane G. Miller
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Fayetteville, North Carolina 28301
Attorney for Respondent

STATUTES AND RULES IN ISSUE

N.C. Gen. Stat. 131D, Article 1A
N.C. Admin. Code, tit 10, subchapters 41A and 41F

ISSUE

Did Respondent err in revoking Petitioners' foster home license on grounds of child neglect?

Based upon careful consideration of the testimony and evidence presented at the hearing, the documents and exhibits received into evidence, and the entire record in this proceeding, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioners hold a foster home license issued by the Respondent.
2. On October 19, 1990, a representative of the Respondent agency contacted Mrs. Jones and stated that there were two children who were in an emergency situation and had to be placed in a home before the end of the day.
3. Mrs. Jones agreed to accept the children and they were brought to her home.
4. The children were Danielle Dory, born December 24, 1987, and Demarcus Dory, born March 8, 1989. At the time the children were brought to Petitioners' home, Danielle was three years of age and Demarcus was two years of age.

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5. When the children were brought to Petitioners' home the social worker said that she did not have any history to report to Petitioners. The children's older sister was present and told Petitioners that the boy (Demarcus) did not drink a "bottle."

6. Petitioners had another foster baby in their home who was still drinking from a "bottle" and Mrs. Jones observed Demarcus trying to take the bottle from the baby. She sent her husband to the store to buy a bottle for Demarcus.

7. She filled the bottle with milk and Demarcus drank it straight down. She tried to remove the "bottle" at one point so Demarcus would catch his breath, but he cried and pulled it back. He finished the bottle and thereafter whenever she gave him a "bottle", he drank it straight down until it was finished.

8. When the children were first dropped off, the social worker said that she had bought them Happy Meals from McDonalds. After the social worker left, Petitioner observed that the children appeared to be hungry. She fed them fried chicken and they ate voraciously.

9. During the time the children were with Petitioners, they observed that they ate enormous amounts of food. They would usually eat a full plate and then a second full plate of food.

10. On three occasions the children ate until they threw up.

11. At one time Petitioner called her "license worker", Annette Bailey, and asked her to come to the home and observe the children. Ms. Bailey did so, but no action was taken.

12. At some point Petitioner observed that Danielle was sexually acting out. Petitioner called the social worker and was advised to take Danielle to Dr. Sinclair, a local pediatrician.

13. Dr. Sinclair saw Danielle on several occasions while she was in the Petitioners' care.

14. On another occasion Petitioners observed that Danielle had vaginal bleeding. Mrs. Jones called Dr. Sinclair and Dr. Sinclair called a prescription in to the drug store which Petitioner picked up and administered to Danielle. The medication, which Petitioner could not identify, stopped the bleeding.

15. Petitioner reported to the social workers and to Dr. Sinclair that the children ate an inordinate amount of food and that they ate as if they were famished.

16. In February of 1991, Petitioner again brought Danielle to see Dr. Sinclair. Dr. Sinclair determined that Danielle was losing weight and admitted her to Duke's Children's Hospital.

17. In June of 1990, prior to being placed at Petitioners' home, Danielle weighed 30-1/4 pounds. Prior to being placed in Petitioners' home, Danielle's weight had dropped to 27-1/2 pounds.

18. In December of 1990, after Danielle had been with Petitioners for approximately two months, Danielle had lost 1/2 pound and weighed 27 pounds.

19. Prior to being sent to Petitioners' home, Demarcus weighed 22-1/5 pounds. On December 3rd of 1990, Demarcus weighed 18-1/2 pounds.

20. In February of 1991, at the time Dr. Sinclair decided to admit Danielle to the hospital, Danielle weighed 24 pounds.

21. After Dr. Sinclair had admitted Danielle to the hospital she asked to see Demarcus.

22. When Dr. Sinclair saw Demarcus in February of 1991, he weighed 18.7 pounds. She decided to admit him to the hospital and during his stay Demarcus gained approximately 1-1/2 pounds. He left the hospital weighing 20.35 pounds.

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23. Danielle remained in the hospital for about three weeks and during that time she gained 8 pounds, weighing 32 pounds when she left the hospital.
24. After Danielle left the hospital, she was weighed on March 13 of 1991 and had lost 1/3 of a pound.
25. When the children were released from the hospital they were not returned to Petitioners' home.
26. Although Danielle was supposed to be weighed in at a clinic on a weekly basis, she was not weighed again until June.
27. When Danielle was next weighed on June 24, 1991, she had lost another pound, weighing 30-2/3 pounds.
28. Danielle's records indicate that another weight was taken in August of 1991 at which time she weighed 31 pounds.
29. Her record also indicates that she was weighed in January of 1992 at which time she weighed 35 pounds.
30. Danielle had an extensive medical record. She had had surgery as an infant due to a cyst on her ovary. She also suffered from hirsutism, or excess hair growth.
31. Hirsutism is the presence of excessive body and facial hair, in a male pattern, especially in women. It may be present in normal adults as an expression of an ethnic characteristic or may develop in children or adults as the result of a metabolic disorder, usually endocrine in nature. Idiopathic hirsutism is of uncertain origin in women, who may additionally exhibit menstrual abnormalities and sterility. It may reflect hypersecretion of adrenocortical androgens. (STEDMAN'S MEDICAL DICTIONARY 25th Edition Illustrated, Page 717).
32. It was also suspected that Danielle had been the victim of sexual abuse.
33. Gail Lankford, who is a Child Protective Service Investigator with Wake County, was asked to do an investigation on February 28, 1991.
34. During their stay at the hospital, the children were not fed through a feeding tube.
35. The children were put on a 2000 calorie per day diet.
36. Although Mrs. Lankford does not know what tests were done on the children, she testified that the doctors reported that there was no lack of any particular vitamin or element, no diarrhea, and no other evidence of organic disease.
37. Ms. Lankford testified that the doctors she interviewed stated that there was no explanation for the children's weight loss except that Petitioners were not giving them enough food, particularly in light of the fact that the children gained weight while they were in the hospital.
38. None of the doctors testified at the hearing.
39. Petitioner testified that she had made phone calls to the social workers expressing concerns about the children but no one had told her what to do.
40. Ms. Lankford interviewed Petitioner twice and found her to be cooperative, pleasant, and credible.
41. Petitioner also told Ms. Lankford that the children ate two platefuls at every meal and ate three meals and three snacks each day.

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42. Ms. Lankford sought another opinion and sent some of the children's records to Dr. Desmond Runyon, a Pediatrician at University of North Carolina at Chapel Hill.

43. Dr. Runyon reviewed the partial records including a height and weight summary, Ms. Lankford's "dictation", and team notes from the Child Medical Evaluation team at Duke.

44. Dr. Runyon concluded that the documents he saw indicated no evidence of underlying organic disease and stated that "the final common pathway to failure to thrive is lack of calories." He also stated that the records appear to be "pretty damning of the foster home."

45. Dr. Runyon's letter, written on June 17, 1991, stated that the children had gained weight during their hospital stay and that "the children have been well since."

46. Although Danielle's weight increased to 35 pounds by January of 1992, she did not grow in height between October of 1990 and January of 1992.

47. Dr. Runyon did not testify at the hearing.

48. Ms. Lankford testified that the hospital record, which was not introduced at the hearing, indicates that the children ate without stopping during their hospitalization.

49. Both children are small in stature and developmentally delayed. In 1991, Danielle was below the 10th percentile on the children's growth chart and Demareus was below the 5th percentile.

50. Other than endocrine tests for Danielle's hirsutism, Ms. Lankford is not aware of what tests, if any, were performed during Danielle's hospitalization.

51. Ms. Lankford understands that the children were taking nourishment by mouth during their hospital stay, but does not know if any nourishment supplements were given to the children in addition to their meals.

52. Petitioner's neighbor, Ethyl May Clegg, testified that she saw the children at Petitioner's home and observed them eating an enormous amount of food. She further testified that the children looked undernourished.

53. Marian Gordon, Petitioner's friend and a Nursing Care Assistant at Duke, testified that she saw the children at Petitioner's home and stated at that time that there was "something wrong with them." She also observed them at a church reception where they "ate like pigs." At that reception, Ms. Gordon told Petitioner, "You'd better stop them." Ms. Gordon also saw the children on subsequent occasions at the Petitioner's home and stated, "I can't eat as much as they did." She further testified that she could not believe Danielle was three years old because she was "always little."

54. Tanzy McNair, another friend of Petitioner, testified that she saw the children at Petitioner's home. She stated that the girl was small for her age and "not normal" because she was developmentally delayed. She stated that they ate a lot and wanted more. She testified that they ate "so much food and they were so little." She testified that Petitioner and her grandchildren treated the Dorthy children well.

55. Petitioner's daughter, Alicia Pierce, testified that she was there the day the children were brought to Petitioner's home. She testified that they were very scared and that her mother gave them a bath, fixed them food, and asked Alicia to take them to the store for clothes. She testified that Danielle had a vaginal discharge and was bleeding when she went to the bathroom. She stated that the children ate large quantities of food and never refused anything.

56. Patricia Pegues, who was at one time the Durham County Social Worker assigned to Petitioner, testified that Petitioners kept Ms. Pegues' baby for 2-1/2 years and had a good nurturing ability.

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57. She testified that Petitioners had accepted a baby boy at one point in time who had a feeding tube. Petitioners took good care of the boy and eventually convinced the doctors to remove the tube and allow them to feed the boy normally. The tube was removed and the boy did well on regular meals.

58. Janice Williams, who was the social worker who conducted training when Petitioners first received their foster care license, testified that many children who are in need of foster homes have eating problems and that that is part of the training curriculum. She testified that children who are the victims of abuse or neglect often eat lots of food.

59. She further testified that Petitioners' family are all overweight and that Petitioners have a home situation where Mrs. Jones cooks regularly and has a great deal of food available.

60. Ms. Williams testified that she placed the boy in the Petitioners' home who was on a feeding tube. She stated that Petitioner visited the boy in the hospital before he was placed in her home and learned how to feed him through the tube. The boy was released from the hospital into Petitioners' care. Ms. Williams testified that she believed that if Petitioner were given any special instructions on feeding the Dorts children she would have followed those instructions.

61. The children have been in two foster homes since they were moved from Petitioners' home and both new foster parents have reported to the children's Child Service Coordinator that the children just do not stop eating.

62. Ms. Jones testified that she does not know why the children gained weight while they were at Duke.

63. After the investigation was complete, Ms. Lankford substantiated neglect against the Petitioners based upon the doctors' opinions.

64. Petitioner's foster care license was revoked.

Based on the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The facts are uncontested that the children were developmentally delayed, small in size, that Danielle had problems with vaginal bleeding, suffered from hirsutism, and that both children had aberrant eating habits. The facts also indicate that Danielle lost weight before she came into Petitioners' home and that she lost some weight after she was released from the hospital. The facts indicate that Danielle weighed 32 pounds upon her release from the hospital in March of 1991 and that in January of 1992, ten months later, she had gained only three pounds and had not grown at all in height.

The Respondent, of course, was not aware of facts and information which would occur subsequent to their decision to revoke.

The revocation of Petitioners' license was based solely on the opinion of the doctors. Ms. Lankford did not have familiarity with medical procedures and could not report what tests were done or whether or not any food supplements were administered during the hospital stay. None of the doctors were present to testify. Without the presence of the doctors, there could be no questioning concerning what facts they knew or did not know, what tests were performed, what happened during the hospitalization, or any other information upon which they may have based their conclusions. It is unknown, for example, whether the doctors observed the children's eating behavior and believed it to be caused by hunger or by an eating disorder.

While Ms. Lankford may have felt obliged to defer to the doctors' opinions, the facts do not indicate with any specificity exactly what the doctors reported or upon what tests and information they based their opinions.

CONTESTED CASE DECISIONS

Dr. Runyon's opinion was presented in the form of a letter but was based upon partial files which were submitted to him. Dr. Runyon never saw nor examined the children.

Respondent presented no evidence, other than the hearsay evidence of doctors' opinions, which would indicate that Petitioners withheld food from the children.

Petitioners presented much direct evidence to indicate that they were good foster parents and did not withhold food from the children.

The facts strongly indicate that Petitioners were good foster parents and offered their foster children a lot of attention and care. While they may not have provided the Dorthy children with particular or specialized diets or dietary supplements, it is concluded that they did not keep food from the children either intentionally or unintentionally.

2. The Respondent has not met its burden of proof that the revocation of Petitioners' foster home license was proper.

Based upon the above Conclusions of Law, the undersigned makes the following:

RECOMMENDATION

That Respondent's decision to revoke Petitioners' foster home license be reversed.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, N.C. 27611-7447, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency is required by G.S. 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina Department of Human Resources

This the 1st day of May, 1992.

Dolores O. Nesnow
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF Pitt

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 EHR 0098

PAULA DAIL, Petitioner)	
)	
)	
)	
v.)	RECOMMENDED DECISION
)	
)	
N.C. DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES, DIVISION OF MATERNAL AND CHILD HEALTH, WIC SECTION, Respondent.)	
)	

This matter was heard before Brenda B. Becton, Administrative Law Judge, on March 2, 1992, in Greenville, North Carolina. At the conclusion of the hearing, the parties exercised their right to file written submissions as provided for in North Carolina General Statutes section 150B-34(b). The record was closed on March 16, 1992.

APPEARANCES

Petitioner: Pro se.

Respondent: Belinda A. Smith, Associate Attorney General, North Carolina Department of Justice, Raleigh, North Carolina.

ISSUES

1. Whether the Petitioner, or her employee, provided cash for WIC food instruments on or about October 21, 1991, in violation of Title 15A, Chapter 21D, section .0706(b)(9) of the North Carolina Administrative Code.
2. Whether the Petitioner, or her employee, charged a WIC compliance buyer more than the current shelf price for WIC-approved foods in violation of Title 15A, Chapter 21D, section .0706(b)(1) and (4) of the North Carolina Administrative Code on or about October 8, 1991 and October 21, 1991.
3. Whether the Petitioner, or her employee, failed to properly redeem WIC food instruments by not completing the date and purchase price on the food instruments before obtaining the participant's signature in violation of Title 15A, Chapter 21D, section .0706(b)(1), (3), (4), and (6) of the North Carolina Administrative Code on or about October 8, 1991 and October 21, 1991.
4. Whether the Petitioner should be disqualified from participating as an authorized WIC vendor in the USDA Food Stamp Program.

EXHIBITS

The following exhibits offered by the Respondent were admitted in evidence:

R1. N.C. WIC Vendor Agreement between Paula Dail and Pitt County dated May 30, 1991.

N.C. WIC Vendor Application signed by Paula Dail for Doc's Store and dated May 30, 1991.

WIC Price List completed by Paula Dail and dated May 22, 1991.

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- R2. WIC Compliance Buy Investigation Report dated October 8, 1991.
- R3. WIC Compliance Buy Investigation Report dated October 21, 1991.
- R4. WIC Cash Buy Compliance Investigation Report dated October 8, 1991.
- R5. WIC Cash Buy Compliance Investigation Report dated October 21, 1991.
- R6. Notice of Intent to Disqualify letter dated January 24, 1992.
- R7. North Carolina WIC Vendor Manual, Revised June 1991.
- R8. Attendance Record for Vendor Training 1991.

FINDINGS OF FACT

From official documents in the file, sworn testimony of the witnesses, and other competent and admissible evidence, it is found as a fact that:

- 1. The Petitioner is the owner of a convenience store located in Winterville, North Carolina known as Doc's Store. Pursuant to a WIC Vendor Agreement signed by the Petitioner on May 30, 1991, she is an authorized WIC vendor, holding stamp number 4846.
- 2. "WIC" is an acronym for "Women, Infants, and Children." The purpose of the WIC program is to provide supplemental foods and nutrition education to low income pregnant women, infants, and children up to age five, who are at nutritional risk.
- 3. The WIC program is federally funded and administered in North Carolina by the Department of Environment, Health, and Natural Resources, Division of Maternal and Child Health.
- 4. WIC foods are supplied to participants through the retail grocery system via food instruments. People who are served by the WIC program receive food instruments from a local Community Health Center. The instruments list specific foods that are deemed necessary for the health of the pregnant woman and her unborn child, and any children under age five. The instruments list the participant's name, a date of issue, a date by which the instrument must be used, a blank where the vendor can write the date the instrument is redeemed, a maximum amount the instrument can be used for--denoted as "void if exceeds," and requires the vendor to fill in a "pay exactly" box with the actual cash price of the purchased foods.
- 5. The WIC program contracts with vendors to accept WIC food instruments in exchange for supplemental foods provided to the participants. When a person served by WIC presents the food instrument and the foods listed on it to a WIC vendor, the vendor is required by law to ring up the transaction on its register, enter the price of the purchased goods on the food instrument, and obtain the signature of the person listed on the instrument. A vendor may fill a voucher partially, only in the participant's discretion, and a vendor may not issue a raincheck if the vendor does not have all of the items listed in stock.
- 6. The Petitioner signed a WIC Vendor Agreement which sets forth all of the terms by which a vendor is required to abide.
- 7. Procedures for proper vendor redemption of food instruments are taught in the annual vendor training sessions. The last vendor training session in the Greenville area was conducted by Celia Witt, Pitt County WIC Director, on May 7, 14 and 23, 1991. Besides presenting information regarding WIC procedures and regulations, the program specifically included a discussion of actions which constitute serious violations of the WIC rules. A representative from the Petitioner's store attended the training session held on May 7, 1991 and received a copy of the North Carolina WIC Vendor Manual which contains directions and requirements for proper food instrument redemption.

8. The petitioner signed a WIC Price List on May 22, 1991 which lists the current highest price for WIC-eligible foods sold by the Petitioner's store.
9. "To overcharge" means to charge the State agency more for supplemental foods than other customers are charged for the same foods.
10. The Respondent initiated an investigation of the Petitioner's store because of concern generated by data it received regarding the Petitioner's WIC instrument redemption pattern.
11. On or about October 8, 1991, Sheila Davis, a WIC compliance investigator, entered the Petitioner's store posing as a WIC participant for the purpose of purchasing foods listed on a WIC food instrument in order to check compliance with the laws governing the WIC program.
12. Ms. Davis used food instrument number 01862543 which had a "void if exceeds" value of \$25.00 to purchase one (1) gallon of Carolina Dairies milk; two (2) boxes of Country Corn Flakes cereal; and one (1) pound of hoop cheddar cheese. None of the items was marked with a price.
13. The clerk, Paula Dail, did not write the date or the purchase price on the food instrument before obtaining Ms. Davis' signature on October 8, 1991.
14. On October 8, 1991, WIC Compliance Investigator, Audrey Barnett, visited the Petitioner's store and purchased one (1) gallon of Carolina Dairies milk, one (1) box of Country Corn Flakes, and one (1) pound of hoop cheddar cheese and was charged \$9.09.
15. Based upon the Petitioner's WIC price list and a cash buy done by Audrey Barnett, the approximate actual price of the items purchased by Ms. Davis with WIC food instrument number 01862543 was \$12.96.
16. The Petitioner redeemed food instrument number 01862543 for \$15.85.
17. On October 8, 1991, the Petitioner charged the WIC Program more than the current shelf price for the items purchased with a WIC food instrument.
18. On October 21, 1991, Ms. Davis returned to the Petitioner's store, again in an undercover capacity, to buy food with two WIC food instruments. On this occasion, with food instrument number 01862545, which had a "void if exceeds" value of \$16.00, she purchased two (2) 46 ounce cans of Golden Tap orange juice and one (1) 12 ounce jar of Roddenberry peanut butter.
19. The cans of Golden tap orange juice were unmarked. The price listed on the Petitioner's WIC Price List for 46 ounce cans of juice is \$1.99. The twelve ounce jar of peanut butter, which is an ineligible item, was marked with the price of \$1.09. The actual price of all items purchased was \$5.07. The Petitioner redeemed food instrument 0862545 for \$11.47.
20. On October 21, 1991, Ms. Davis used a second food instrument, number 01862533, with a "void if exceeds" value of \$25.00 to purchase two 46 ounce cans of Golden Tap orange juice, one box of Country Corn Flakes cereal, and one pound of cheese.
21. The clerk who waited on Ms. Davis on October 21, 1991, identified at the hearing as Mr. Stotts, did not complete the date or the purchase price on the food instruments before obtaining Ms. Davis' signature.
22. Mr. Stotts provided Ms. Davis with \$7.00 in cash after he totalled the amount of her purchase on calculator.
23. According to the Petitioner's WIC Price List, the total price of the items purchased with food instrument number 01862533 should have been \$10.85. The Petitioner redeemed food instrument number 0186533 in the amount of \$19.83.

CONTESTED CASE DECISIONS

24. On October 21, 1991, WIC Compliance Investigator Audrey Barnett purchased one box of Country Corn Flakes, one gallon of Carolina Dairies milk, one pound of cheese, one 46 ounce can of Golden Tap Orange juice and was charged \$11.00. According to the Petitioner's WIC Price List, the cost of the items purchased by Barnett should have been \$12.06 plus \$.72 tax.
25. On October 21, 1991, the Petitioner charged the WIC Program more than the current shelf price for the items purchased with WIC food instruments.
26. On January 24, 1992, the WIC Program notified the Petitioner by letter, sent certified mail, of its intent to disqualify him from participation in the WIC Program. The Petitioner filed a petition for a contested case hearing on February 4, 1992.
27. The Petitioner's store is located in a rural area of Pitt County.
28. There is an authorized WIC vendor in good standing located within six miles of the Petitioner in Farmville, and a second vendor is located within eight miles of the Petitioner in Greenville.
29. Terry Bland, a WIC participant, testified that the disqualification of the Petitioner's store would result in a hardship to her because she already has to pay someone to drive her to the store, and she would have to pay four dollars more to get someone to drive her to Greenville.
30. Terry Bland also testified that the Petitioner partially fills WIC food instruments for her when the store does not have all of the prescribed items in stock. The Petitioner allows Ms. Bland to return at a later time to finish filling her WIC food instruments.
31. The issuance of rainchecks is specifically prohibited by 15A NCAC 21D .0706(e)(1)(C)(iii).
32. Pauline Stocks, a WIC participant, testified that she has been in the Petitioner's store and seen other WIC participants who have walked to the store come in to purchase food with WIC vouchers. Ms. Stocks also testified that the Petitioner has delivered groceries to her home on occasions when she has been unable to leave her house.
33. Disqualification of the Petitioner from the WIC Program may result in an inconvenience to some participants and in some participant hardship.
34. Title 15A, Chapter 21D, subsection .0706(e) of the North Carolina Administrative Code sets out a point system for sanctioning vendors for violations of the WIC Program's regulations. Under the system established in subsection .0706(e), if a vendor accumulates fifteen (15) or more points, the vendor is to be disqualified from participation in the Program. The period of disqualification is calculated using the following formula: number of points of the worst offense multiplied by eighteen (18) days. Eighteen days shall be added to the disqualification period for each point over fifteen (15) points. Points accumulated remain on the vendor's record for a period of one year or until the vendor is disqualified as a result of those points.
35. The violation of providing cash for WIC food instruments carries a penalty value of twenty (20) sanction points; the violation of charging more than the current shelf price for WIC-approved foods carries a value of fifteen (15) sanction points; the violation of failing to properly redeem WIC food instruments carries a value of seven and one-half (7.5) sanction points.

Based on the foregoing Findings of Fact, the undersigned Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Petitioner is an authorized WIC vendor bound by the terms of the WIC Vendor Agreement signed by her and the administrative rules and laws regulating the WIC program.

CONTESTED CASE DECISIONS

2. The North Carolina WIC Program is vested with the authority to authorize and disqualify WIC vendors pursuant to North Carolina General Statutes section 130A-361 and Title 15A, Chapter 21D of the North Carolina Administrative Code.
3. The Petitioner violated 15A NCAC 21D .0706(e)(1)(C)(i) by failing to properly redeem WIC food instruments on October 8, 1991 and October 21, 1991.
4. The Petitioner violated 15A NCAC 21D .0706(e)(1)(D)(i) by charging more than the current shelf price for WIC-approved foods on October 8, 1991 and October 21, 1991.
5. The Petitioner violated 15A NCAC 21D .0706(e)(1)(E)(i) by providing cash for WIC food instruments on October 21, 1991.
6. Pursuant to the regulatory scheme set forth at 15A NCAC 21D .0700, the violations are worth 65 points. Accordingly, it is within the Respondent's authority to disqualify the Petitioner from participation as a WIC vendor for a period of three (3) years, the maximum authorized by 7 C.F.R. §24612(k)(ii) and 15A NCAC 21D .0706(e).
7. The Petitioner's disqualification as a WIC vendor may result in some participant hardship. However, the seriousness of the violations warrants the Petitioner's disqualification despite the possibility of participant hardship.

RECOMMENDED DECISION

The Department of Environment, Health, and Natural Resources will make the Final Decision in this contested case. It is recommended that Agency adopt the Findings of Fact and Conclusions of Law set forth above and that the Petitioner be disqualified from participating in the WIC Program as an authorized vendor for a period of three (3) years.

NOTICE

Before the Department of Environment, Health and Natural Resources makes the FINAL DECISION, it is required by North Carolina General Statutes section 150B-36(a) to give each party an opportunity to file exceptions to this RECOMMENDED DECISION, and to present written arguments to those in the agency who will make the final decision.

The agency is required by North Carolina General Statutes section 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

This the 28th day of April, 1992.

Brenda B. Becton
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

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Note: Title 21 contains the chapters of the various occupational licensing boards.

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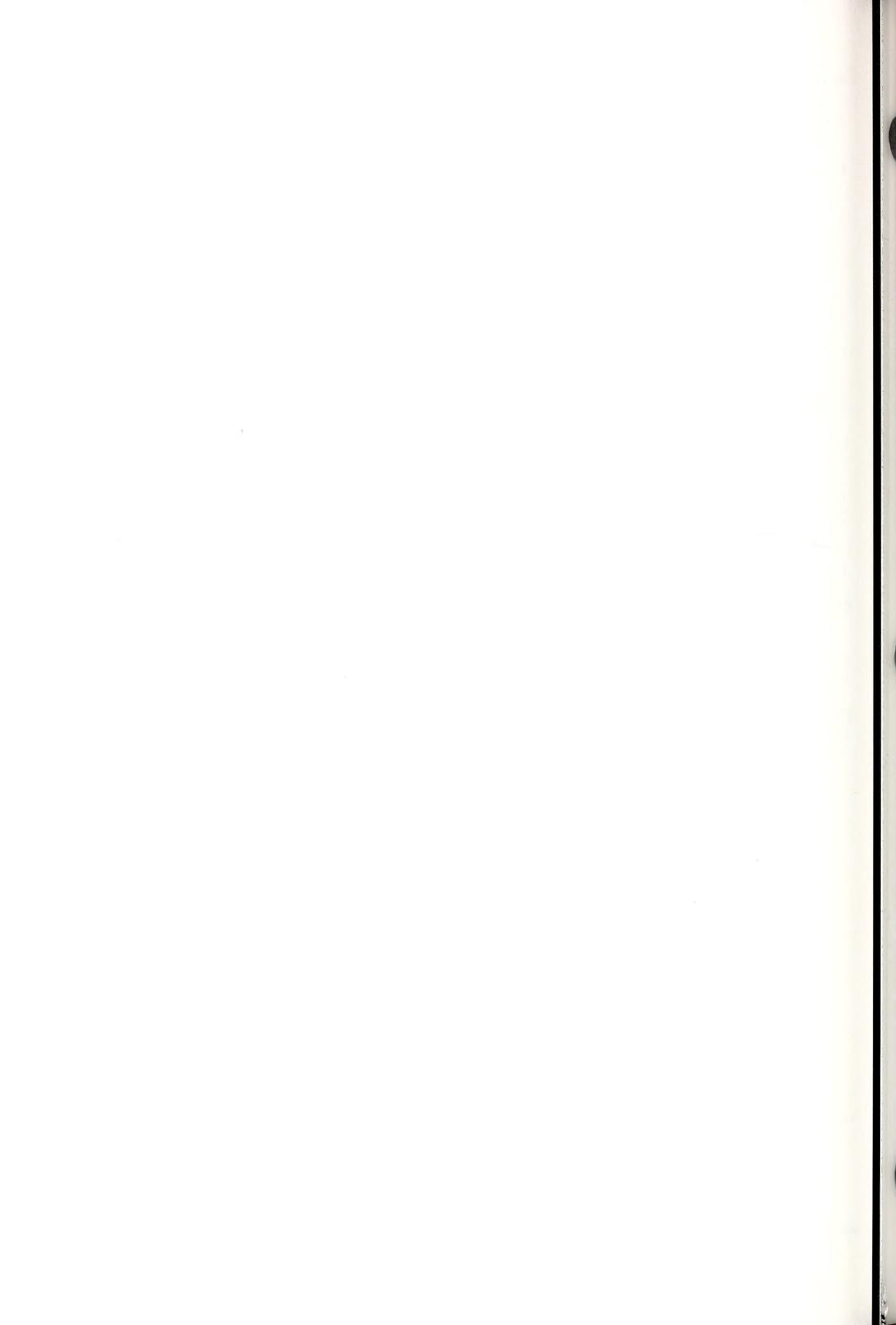
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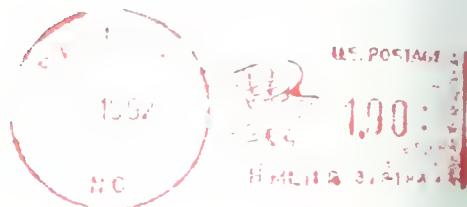
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